

funds for internal improvements. However, Senator Van Buren was, at the time, not opposed to such appropriations. Alwine explained:

It was obvious that he was not then a firm opponent of federal financing for he said, "if the General Government has not now the power . . . he for one thought that, under suitable restrictions, they ought to have it." It was his hope that by amending the Constitution, the forces that considered the power already existing would co-operate with those who did not so believe and get the matter settled.

Senator Van Buren's amendment and one in the House were not approved.

In 1824, Senator Buren voted in support of a third internal improvements bill. The bill, which Senator Andrew Jackson supported, was for roads in the territory of Florida. It did not raise a constitutional question because Congress had express authority over all governmental activities in the territories.

During 1824, Senator Buren voted nay on a bill permitting Alabama to collect tolls on goods transported on her navigable rivers. During the debate, he pointed out that the Enabling Act allowing Alabama to join the union prohibited such tolls. That same year, he also voted against a bill appropriating \$500,000 to construct a canal from Albemarle Sound in North Carolina to the Atlantic Ocean and removing an obstruction from a channel connecting the Albemarle Sound with Pamlico Sound. He also voted against the General Survey Act of 1824.

During the next session of the 18th Congress, he voted for the fourth and final time in support of an internal improvements bill. Senator Benton had sponsored the bill to appropriate \$30,000 to mark a road from Missouri to Mexico through Indian territory.

Alwine's count of yea votes differed from Van Buren's account in his autobiography where he wrote that he had voted "against every similar proposition subsequent to the act to erect tollgates on the Cumberland Road."

Senator Van Buren was increasingly concerned by the growing number of internal improvement bills that had popular support. Alwine wrote:

As a result of the discord apparent whenever the question of federal financing was discussed in Congress and the increasing number of memorials and petitions for aid, Van Buren, as chairman of the Judiciary Committee, became more and more concerned about the legality of these appropriations. Another cause for concern was the mounting cost of these projects which were well known to Van Buren because he was a member of the Finance Committee. Then, too, the scramble for money and resulting log-rolling was getting to be the talk of Congress.

Reflecting on the popular support in Congress, he said "in a large majority of cases the interests of parties and those whose public fortunes they desire to advance are consulted before those of the Country." Van Buren was referring to the many surveys being conducted throughout the country at federal expense, most of which appeared to be of local rather than national benefit. He stated that

the proponents of federal assistance became so alarmed at the flagrant abuses of these surveys that they recommended “that the law should be so altered as to make a specific Act of Congress necessary in each case. No action was taken, however, as more and more requests for federal assistance were initiated by members of Congress. [Alwine, Paul R., *Martin Van Buren and the Internal Improvements Question*, A Thesis Presented to the Department of History and the Faculty of the College of Graduate Studies, University of Nebraska at Omaha, In Partial Fulfillment of the Requirements for the Degree, Master of Arts, November 1968]

With these concerns in mind, Senator Van Buren remained in Washington between sessions of Congress in 1824. He took this opportunity to visit Thomas Jefferson at Monticello, accompanied by Senator Mahlon Dickerson of New Jersey, an acquaintance of the former President. During Jefferson’s stint as Vice President in Philadelphia he had become acquainted with Dickerson who was practicing law in that city. Van Buren recalled the visit in his autobiography. The former President greeted his old friend, Senator Dickerson, and Senator Van Buren “cheerfully and heartily” as they discussed many topics. He added, “I have often reproached myself for having omitted to make memoranda of his original and always forcible observations and never more than at the present moment.”

Among his recollections was a discussion with former President Jefferson on internal improvements:

The subject of Internal Improvements by the General Government was another matter which occupied Mr. Jefferson's attention and caused him much concern. He spoke of it, with some feeling, as a mode of wasting the public revenues, without the probability of adequate returns, and involving violations of the constitution injurious to the interests it professed to advance, and expressed his approbation of the course I was pursuing in regard to the system in flattering terms.

This praise was for Senator Van Buren’s attempt to amend the Constitution, an idea that President Jefferson had expressed on several occasions. Alwine wrote of the visit:

The opinions stated by Jefferson, no doubt strengthened Van Buren’s determination to make another attempt to amend the Constitution. Upon his return to Washington he devoted considerable efforts to the task of preparing a new constitutional amendment.

After weighing all the evidence and ramifications of a change in position from one of swimming with the crowd to one of firm opposition, he announced his intention to oppose federal financing of internal improvements as the Constitution was written.

On December 20, 1824, he introduced a motion consisting of two resolutions. One stated that Congress did not have the power to make roads and canals in the States. The other

called for a joint committee of Congress to study the issue and “report a Joint Resolution, for an amendment of the Constitution, prescribing and defining the power Congress shall have over the subject of Internal Improvements, and subjecting the same to such restrictions as shall effectually protect the sovereignty of the respective States, and secure to them a just distribution of the benefits resulting from all appropriations made for that purpose.”

He explained that he had intended to introduce a Joint Resolution containing an amendment to the Constitution on internal improvements. However, he had listened to others who thought his intent could better be effected by calling for a select committee to be appointed to report on the subject. He doubted that their constituents “felt a more intense interest” in any matter “than the question of the *rightful* and *probable* agency of the General Government in the great work of Internal Improvement.” State projects “had been harmonious in their progress, and, as far as the means of the States would admit of, successful in their results.” Things were different for the general government:

From the first agitation of the subject, the constitutional power of Congress to legislate upon the subject had been a source of unbroken, and, frequently, angry and unpleasant controversy. The time, he said, had never yet been, when all the branches of the Legislative Department were of the same opinion upon the question. Even those who united in the sentiment as to the existence of the power, differed in almost every thing else in regard to it. Of its particular source in the Constitution, its extent and attributes, very different views were entertained by its friends. There had not been anything in the experience of the past, nor was there any thing in the prospect of the future, on which a reasonable hope could be founded, that this great subject could ever be satisfactorily adjusted by any means short of an appeal to the States.

Given the connection between internal improvements and the prosperity of the country, there always would be efforts to induce the central government to undertake such projects. At the same time, there was little reason “to expect that the opposition to it would ever be given up.” Congress had a duty to resolve the dispute. If it did not do so, the “recited complaints of constitutional infraction must tend to relax the confidence of the People in the Government, and that such measures as may be undertaken upon the subject must be constantly exposed to peril from the fluctuations of the opinion of successive Legislatures.”

He did not call for immediate debate on the resolutions:

He did not, of course, wish to press their immediate consideration, but would call them up at as early a day as would comport with the state of public business and the ordinary course of proceeding in the Senate.

For now, he hoped his colleagues would turn their attention to the subject “as soon as they conveniently could, to the end that, when it was taken up, it might be carried to a speedy decision, and not exposed to those unprofitable delays and postponements which

had heretofore attended measures of a similar character, and ultimately prevented an expression of the sense of the Senate on their merits.”

Presidents Jefferson, Madison, and Monroe, he said, had called for an appeal to the people in the form of a proposed constitutional amendment to resolve the issue. “As yet, no decided effort to effect this great object had been made; he permitted himself to hope that such effort would now be made.” He acknowledged that President Adams, by contrast, “entertained opinions, as to the power of Congress, which removed all difficulties upon the subject.” Senator Van Buren, who agreed with the earlier Presidents, said “he felt it his duty to bring the subject thus early before the Senate, and when the proper period for discussion arrived, would avail himself of their indulgence to assign his reasons for the course proposed.”

That “proper period” never arrived. This second attempt to secure an amendment was unsuccessful in the Senate and House. Alwine summarized the result:

While Congress took no action, Van Buren was now firmly opposed to all requests for federal financing of internal improvements without an amendment to the Constitution.

President Madison’s Advice

In the fall of 1826, Senator Van Buren initiated correspondence with former President Madison. In a letter dated August 30, 1826, Senator Van Buren discussed his unsuccessful attempts during the last session of Congress to amend the Constitution:

They were not acted upon through the belief that existing circumstances were unfavourable. It is my intention to attempt something upon the Subject at the commencement of the next, & I take the liberty of saying to you, how much I would be gratified with such suggestions as your health leisure & disposition may permit, you to make.

In a long reply on September 20, 1826, President Madison wrote that he would “feel both gratification & obligation in giving any aid in my power towards making the Constitution more appropriate to its objects, and more satisfactory to the nation”:

But I feel also the arduousness of such a task, arising as well from the difficulty of partitioning and defining Legislative powers, as from the existing diversity of opinions concerning the proper arrangement of the power in question over internal improvements.

In balancing powers among the general and State governments, he considered the alternatives:

Give the power to the General Government as possessing the means most adequate, and the objections are 1. the danger of abuses in the application of the means to objects so distant from the eye of a Government, itself so distant from the eye of the people. 2. the danger from an increase of the patronage and

pecuniary transactions of the General Government, that the equilibrium between that and the State Governments may not be preserved.

Leaving the power exclusively with the States would result in several objections. First, because the Constitution deprives them “of the most convenient source of revenues,” namely tariffs, “improvements might not be made even in cases wholly within their own limits.” Second, where roads or canals might span State borders, “the necessary co-operation might fail from a difficulty in adjusting conditions & details from a want of interest in one of them; or possibly from some jealousy or rivalry in one towards the others.” Finally, if roads or canals might pass through a number of States, “particular views of a single State might prevent improvements deeply interesting to the whole nation.”

Dividing the power between the general and State governments “by allotting the appropriating branch to the former & reserving the jurisdiction to the latter . . . has doubtless, a captivating aspect”:

But to say nothing of the difficulty of defining such a division and maintaining it in practice, will the nation be at the expense of constructing roads & canals without such a jurisdiction over them as will ensure their constant subservience to national purposes? Will not the Utility and popularity of these improvements lead to a constructive assumption of the jurisdiction by Congress, with the same sanction of their Constituents, as we see given to the exercise of the appropriating power already stretching itself beyond the appropriating limit.

He thought “the policy and advantage of roads & canals” had taken such a permanent hold on “the public will, that the constructive authority of Congress to make them will not be relinquished, either by that or the Constituent body”:

It becomes a serious question therefore, whether the better course be not to obviate the unconstitutional precedent, by an amendatory article expressly granting the power. Should it be found, as is very possible, that no effective system can be agreed on by Congress, the amendment will be a recorded precedent against constructive enlargements of power: and in the contrary event, the exercise of the power, will no longer be a precedent in favor of them.

The former President suggested “that it is necessary to keep in view, the distinction between a usurpation of power by Congress against the will and an assumption of power with the approbation, of their Constituents.” As the Alien and Seditious Acts illustrated, when the usurpation is without public support, the people can appeal to Congress to set “every thing to rights.” But with public approbation, “the appeal can only be made to argument & conciliation, with an acquiescence, when not an extreme case, in an unsuccessful result.”

With that background, former President Madison, who had written the first 10 amendments to the Constitution, suggested two simple alternatives:

If the sole object be to obtain the aid of the federal treasury for internal improvements by roads & canals, without interfering with the jurisdiction of the States, an amendment need only say "Congress may make appropriations of money for roads & Canals, to be applied to such purposes by the Legislatures of the States within their respective limits, the jurisdiction of the States remaining unimpaired".

If it be thought best to make a constitutional grant of the entire power, either as proper in itself, or made so by the moral certainty, that it will be constructively assumed, with the sanction of the national will, and operate as an injurious precedent, the amendment can not say less, than that "Congress may make roads & Canals with such jurisdiction as the cases may require" [sic]

In closing, former President Madison commented on a phrase that often had been debated during discussion of the issue:

But whilst the terms, "Common defence & general welfare" remain in the Constitution, unguarded against the construction which has been contended for, a fund of power inexhaustible, & wholly subversive of the equilibrium between the General and the State Governments, is within the reach of the former. Why then not precede all other amendments by one, expunging the phrase, which is not required for any harmless meaning; or making it harmless, by annexing to it, the terms "in the cases authorized by this Constitution."

In a followup letter dated October 15, 1826, he addressed the suggestion in a report of the Committee on Roads and Canals, forwarded by Senator Van Buren, that President Washington interpreted that phrase about common defense and general welfare to mean that Congress had the power to appropriate funds for internal improvements. The former President commented that under the Articles of Confederation, the States were dominant, with little danger of Congress, "a Body so feeble," trying to assume greater power:

There is no evidence however that the old Congress ever assumed such a construction of the "terms common defence & general welfare" as is claimed for the new. Nor is it probable that Genl Washington, in the sentiments quoted from, or for him, had more in view than the great importance of measures beyond the reach of individual States, and, if to be executed at all, calling for the general authority of the Union. Such modes of deducing power may be fairly answered by the question, What is the power that may not be grasped with the aid of them?

On March 3, 1827, Senator Van Buren informed the former President that the plan for proceeding had been dropped at least until the next session.

In a reply on March 13, former President Madison replied:

You did well I think in postponing the attempt to amend the phraseology of the Constitution, on a point essentially affecting its operative character. The State of the political Atmosphere did not promise that discussion and decision on the pure

merits of such an amendment, which ought to be desired. Be pleased to accept, with my cordial salutations, the renewed expression of my great esteem.

Senator Van Buren's efforts to secure an amendment were unsuccessful. Alwine summarized the remainder of Van Buren's Senate years:

Van Buren resisted all bills for internal improvements during the remainder of his service in the Senate and while he did not prevent passage of many bills, he and his coalition succeeded in slowing down the number of bills passed.

Although his views would never change, Senator Van Buren had to accept the power of the Adams-Clay coalition, as he explained in his autobiography:

These movements excited the attention and received the approbation of Mr. Jefferson and raised for the moment the drooping spirits of many sincere State-rights men. It soon, however, became evident that there was no reasonable hope, for their success. It was obvious that the Virginia and Kentucky doctrines of Ninety Eight had been too successfully derided and contemned to leave, at that moment the slightest ground of confidence in the adoption of any such proposition. I therefore, after postponing its consideration from year to year in the hope of more favorable indications, suspended further efforts of that nature.

But it will be seen that I was not idle, and that my failure was not my fault.

Senator Van Buren, based on party concerns in New York, ran successfully for Governor in the 1828 election. He resigned from the Senate on December 20, 1828, and took office on January 1, 1829. He would serve only until March 12, 1829, before resigning to become Secretary of State under President Jackson on March 28.

In October 1832, as he was the candidate for Vice President in President Jackson's second term, Van Buren responded to a letter from a committee appointed during a public meeting in Shocco Springs, North Carolina. William M. Holland's 1836 campaign biography of Van Buren excerpted the portion of the letter covering internal improvements. In it, Van Buren wrote that although internal improvements were diversified, they could be divided into two types of works: (1) those the general government builds in the States, with the jurisdiction as well to ensure preservation and use; and (2) simple grants of money from the general government to the States, known as money power.

He did not believe the general government had the power to undertake internal improvements in the States. The power could not be derived from the fact that a State may consent to the project.

Money power had its own unique problems. No matter how clearly the rules for distributing the funds are prepared for congressional use, there was a "wide difference" between what was on paper and practical application. The difference had been observed "by all who have been entrusted with the management of public affairs."

President Jackson had explained the whole subject of internal improvements in his Maysville Road veto message, which had Van Buren's active, zealous, and anxious support. As discussed earlier, Secretary Van Buren played a pivotal role in writing President Jackson's landmark veto of the Maysville road bill:

The opinions declared by the President in the Maysville, and his succeeding annual messages, as I understand them, are as follows. 1st. That Congress does not possess the power to make or establish a road or canal within a state, with a right of jurisdiction to the extent I have stated; and that, if it is the wish of the people that construction of such works should be undertaken by the Federal Government, a previous amendment of the constitution, conferring that power, and defining and restricting its exercise, with reference to the sovereignty of the state, is indispensable. 2d. An intimation of his belief that the right to make appropriations in aid of such internal improvements of a national character, has been so generally acted upon, and so long acquiesced in by the federal and state governments, and the constituents of each, as to justify its exercise, but that it is nevertheless, highly expedient that even such appropriations should, with the exception of such as relate to light houses, beacons, buoys, public piers, and other improvements in the harbors and navigable rivers of the United States, for the security and facility of our foreign commerce, be deferred, at least until the national debt is paid. 3rd. That if it is the wish of the people that the agency of the Federal Government should be restricted to the appropriation of money, and extended in that form in aid of such undertakings, when carried on by state authority, then the occasion, the manner, and the extent of the appropriation, should be made the subject of constitutional regulation.

In these views I concurred and I likewise participated in the difficulties which were encountered and expressed by the President, in adopting the principle which concedes to the Federal Government the right to make appropriations in aid of works which might be regarded as of a national character; difficulties which arose as well from the danger of considering mere usage the foundation of the right, as from the extreme uncertainty of the best rule that had ever been adopted, or that could in the absence of a positive constitutional provision, be established. The reasons on which these objections were founded, are so fully stated in the document referred to, and have been so extensively promulgated, that it is unnecessary for me to repeat them here. Subsequent reflection and experience have confirmed my apprehensions of the injurious consequences which would flow from the resumption of appropriations for internal improvements, with no better rule for the government of Congress than that of which I have spoken: and I do not hesitate to express it as my opinion, that the general and true interests of the country would be best consulted by withholding them, with the exception which I have already referred to, until some constitutional regulation upon the subject has been made.

In this avowal, I am certainly not influenced by feelings of indifference, much less of hostility to internal improvements. As such, they can have no enemies. I have never omitted to give them all the proper aid in my power; for which by the way, I claim no particular merit, as I do not believe there is an honest and sane man in the country, who does not wish to see them prosper – but their construction, and the manner in which, and the means by which they are to be effected, are quite different questions. Rather than again expose our legislation to all the corrupting influences of those scrambles and combinations in Congress,

which have been heretofore witnessed, and the other affairs of the country, to the injurious effects unavoidably resulting from them, it would, in my opinion, be infinitely preferable to leave works of the character spoken of, and not embraced in the exception which has been pointed out, for the present, to the supports upon which they have reposed with so much success for the last two years, viz: state efforts and private enterprise. If the great body of the people become convinced that the progress of these works should be accelerated by the federal arm, they will not refuse to come to some proper constitutional arrangement upon the subject. The supposition that an equitable rule, which pays a proper respect to the interest and condition of the different states, could fail to receive, ultimately the constitutional sanction, would be doing injustice to the intelligence of the country. By such a settlement of the question, our political system, in addition to the other advantages derived from it, would, in relation to this subject at least, be relieved from those dangerous shocks, which spring from diversities of opinion upon constitutional points of deep interests – and in the mean time, the resources of the country would be best husbanded by being left in the hands of those by whose labor they are produced. [Reproduced in Holland, William M., *The Life and Political Opinions of Martin Van Buren, Vice President of the United States*, Belknap & Hamersley, 1836]

The Cumberland Road in 1837

President Van Buren submitted his first annual message to Congress on December 5, 1837. His message reflected the fact that by then, the country saw some signs that the Panic of 1837 was subsiding. He told Congress:

The pestilence which, invading, for a time, some flourishing portions of the Union, interrupted the general prevalence of unusual health, has happily been limited in extent, and arrested in its fatal career. The industry and prudence of our citizens are gradually relieving them from the pecuniary embarrassments under which portions of them have labored; judicious legislation, and the natural and boundless resources of the country, have afforded wise and timely aid to private enterprise; and the activity always characteristic of our people has already, in a great degree, resumed its usual and profitable channels.

At the start of the year, the balance in the Treasury was \$45,985,023. Receipts during the year totaled an estimated 23,499,981, for an aggregate of \$69,468,504. By the end of the year, the general government will have expended \$35,281,361 on appropriations by Congress, leaving a nominal balance of \$34,187,143:

But of that sum, only one million eight-five thousand four hundred and ninety-eight dollars is considered as immediately available for, and applicable to, public purposes. Those portions of it which will be for some time unavailable, consist chiefly of sum deposited with the States, and due from the former deposite banks.

He had, accordingly, asked the departments to prepare their estimates for 1838 on an economical scale:

In the great and often unexpected fluctuations to which the revenue is subject, it is not possible to compute the receipts beforehand with great certainty; but should they not differ essentially from present anticipations, and should the appropriations not much exceed the estimates, no difficulty seems likely to happen in defraying the current expenses with promptitude and fidelity.

He did not discuss internal improvements. However, he submitted reports from the departments containing “such suggestions as their experience might enable them to make as to what further legislative provisions may be advantageously adopted to secure the faithful application of public moneys to the objects for which they are appropriated; to prevent their misapplication or embezzlement by those entrusted with the expenditure of them; and generally to increase the security of Government against losses in their disbursement.”

Secretary of War Poinsett’s message to the President included reports on the status of the Cumberland Road. One of the reports was from Captain Delafield, who discussed the progress of operations on the Cumberland Road east of the Ohio River during the year ending September 30, 1837. At the time of his report a year earlier, “there remained unfinished the stone bridge over Will’s creek, near Cumberland, and the cast iron bridge over Dunlap’s creek, between Brownsville [sic] and Bridgeport.” The Will’s creek bridge had been finished, “crossing the entire valley of Will’s creek.”

The masonry for the Dunlap’s creek bridge was finished in September 1837:

It is constructed of very large, heavy masses of stone, with beds and joints cut true from face to rear of the walls; laid in cement mortar where exposed to the water, and on the outside; and with cement mixed with lime mortar on all parts.

The arch was to be of cast iron, but was not entirely completed. Captain Delafield said of the bridge:

This work is no where, in that district of country, exceeded in its execution for durability and workmanship”

The previous year, he had \$29,968.87 to finish repairs of the road, but said at the time that \$7,183.63 more was needed. After spending \$27,626.76 on the bridge across Dunlap’s Creek, he found that additional funds would be needed for completion. He estimated he needed an additional \$7,000 for small items, including “Macadam metal for roadway, scaffolding for raising the bridge, tar and paint for preserving it from rust, and earth for filling the wing walls, after this winter’s settling”:

In again asking for an appropriation to finish this work, the only explanation I have to offer for its necessity are the facts set forth above, that have arisen from the novelty of the undertaking, nothing of the kind ever having been executed in this country, so far as I can learn, and no individual concerned in its construction ever having worked on similar operations.

Lieutenant Dutton, writing from the Cumberland Road Office in Springfield, Ohio, discussed the status of the road in that State. Work had continued through the year, except for “a partial suspension occasioned by the intervention of the last winter.” Even then, “the preparation of metal for covering” the road continued without interruption.

With the \$190,000 appropriated by the Act of March 3, 1836, for the work in Ohio, Lieutenant Dutton “determined to apply as much of the available means to the completion of the road from Columbus to Springfield, a distance of forty-three miles, as could be done consistently with the general interests of the work; and the balance to the extension of the road to the west of Springfield. Most of the funds went to building a McAdam pavement between Columbus and Springfield:

The sub-division of fourteen miles west from Columbus, to the town of Jefferson, was completed during the winter, and received by the Executive of the State on the 25th March last. The preparation of all the metal required for . . . nine miles, in continuation of the twenty-third mile, was completed in May, and six inches laid on the same on the 10th June. The remaining three inches being prepared and in readiness to lay thereon as soon as the former shall have been sufficiently packed to receive it, which has not yet taken place in consequence of the travel during the dry weather of the past season having preferred the by-roads in preference to passing over metal newly laid. This object will, however, soon be effected by the approaching wet weather

The laying of six inches of metal from the 32d to the 43d mile-stone, in the town of Springfield, was completed in September; and all the grading between Columbus and Springfield will be completed on the 1st of November

All the masonry on the above division, has been completed and the stone bridges furnished with parapets of cut limestone from the quarries at Springfield.

With the contracts now underway, and expenditure of the most recent appropriation, additional work at an estimated cost of \$30,455 will be needed to complete the entire segment and turn it over to the State, probably next summer:

To the west of Springfield, the operations have this season been extended to the Miami river, sixty-one miles west of Columbus. A contract was entered into in the month of August, for grubbing seven miles from the 55th to the 61st mile, inclusive, to be completed during the ensuing winter.

He added:

After the completion and general use of this thoroughfare, the needful repairs may be made on very reasonable terms by contract or otherwise, and fully, it is confidently believed, within the competency of the tolls to meet.

By proper regulation of the travel, and the encouragement by the rule of tolls or legal enactment of the use of wheels of wide bearing upon vehicles transporting

heavy loads, the extent and cost of the repairs may be diminished in a material ratio.

Lieutenant Dutton estimated that he would need \$243,200 in 1838 for work on the road in Ohio.

Captain Ogden, based in Terre Haute, discussed operations in Indiana and Illinois for the year ending on September 30, 1837. For Indiana, he noted that the Act of July 2, 1836, appropriated \$250,000 to continue the road, but with the condition that the funds be expended “in completing the greatest possible continuous portion of said road in the said States, so that such finished parts thereof may be surrendered to the said States, respectively.” As a result:

In consequence of this provision of the law, the operations, with the exception of some slight measures which were deemed essential to the preservation of the road, were confined to that part of it situated between the Illinois State line and twenty miles east of Terre Haute.

During the fall of 1836 and throughout 1837, operations on this portion of the road consisted of:

Grading – At different points along the line.

Quarrying and hauling stone – For bridges, culverts, and Macadamizing.

Masonry – Cutting stone and laying it in bridges and culverts, and smithery for the same.

Carpentry – Getting out timber for superstructure of bridges; for scows or stone flats for Wabash bridge, and for wooden railway leading from one of the Wabash bridge quarries to the Wabash river; constructing tools, implements, &c.

During this period, the operations in the above branches were pushed forward with all possible despatch; but owing to the excessive rains of the season, they were greatly disturbed and retarded.

Due to the rain, the new grade was first cut into ruts and gullies, then washed partly away; roads to the quarries were rendered unusable; pits sunk for foundations were filled with water; some sites for bridges were overflowed. When the water subsided, work on the foundations was resumed, “only to be overflowed and filled again.”

Starting December 1, work was suspended except for carpentry and cutting and quarrying stone.

The Act of March 3, 1837, appropriated \$100,000 for the extension in Indiana. The legislation dropped the reference to continuous sections, but required Captain Ogden to stop using hired labor for the work and instead use contractors. Therefore, when operations could resume, he brought the hired labor back to finish previously begun work, while letting contracts for new work. Work resumed mostly in early April.

However, he was still hindered by the provision making him responsible for making disbursements at multiple locations in Indiana and Illinois, an impossibility for a single superintendent covering two States. He approached several banks, most of which “were loath to accede to the propositions”:

The bank at Richmond was an exception. It acceded, at once, to the propositions; and arrangements were immediately made for starting a party of engineers to that point of the road. A day was appointed for the stage to make its first trip for the season. Seats were engaged; but the road was deemed impracticable, and, being thus twice disappointed, a private conveyance was at length obtained, and on the 11th of April, a party of engineers, with their instruments, set out for Richmond. The engineers were followed by the superintendent in this, as well as in their other movements of the season.

Preparation of the surveys, drawings, estimates, and specifications allowed for work to be put under contract in May and the early part of June:

The contracts, at this point, provide for the grading, draining, and bridging of more than eight and a half miles of the road; commencing within one mile of the Ohio State line, and proceeding west through the towns of Richmond and Centreville. The sections leading through those towns are to be [sic] graded, paved, and covered with broken stone; and the contracts were taken by the respective town corporations, at the engineer’s estimate.

The engineers proceeded to Indianapolis in early June where they put work under contract on June 19 and 26:

The contracts, at this point, provide for the entire completion of about five miles of the road, leading through the town of Indianapolis, and extending about one mile east, and three miles west. With a view of expediting the work as much as possible, and in order to insure the laying on of two coats of metal during the season, one set of contracts was entered into, providing for the repairs of bridges, for grading and draining the road, and for laying on the metal; while another and different set of contracts provided for the timely delivery of the Macadamizing materials.

After Indianapolis, the team of engineers split into two:

Some of them were engaged in making preparations for putting out contracts on the road, in the western part of Indiana and in the eastern part of Illinois; while the others, followed by the superintendent, proceeded to Vandalia, Illinois, and, about the 1st of July, joined an assistant engineer who had been making preparations at that point during the preceding part of the season

After returning from Vandalia, six sections of the road were put under contract, at Terra Haute, on the 2d and 6th of September. These contracts provided for the grading, draining, and bridging of a portion of the road, commencing about three miles east of Terre Haute, (to which point the grading, draining, and bridging was

mostly completed,) and proceeding about three and a half miles to the east. Among other things provided for by these contracts, was the construction of bridges, of 60 feet span, over Middle and East Lost creeks.

A contract was let in late June for the delivery of stone “upon the bank of the Wabash river, at a point about 15 miles below Terre Haute. This stone was intended for the Wabash bridge, and will be towed to Terre Haute by a steamboat constructed for the purpose.”

Captain Ogden reported that the contracts in the vicinity of Terre Haute were awarded at the engineer’s estimate; the contracts at Richmond were awarded “at an advance upon the estimate of less than 20 per cent”; but the Indianapolis contracts “were taken at an advance upon the estimate of more than 60 per cent”:

When the contracts at Indianapolis were taken at these high, not to say extravagant rates, it was certainly nothing more than reasonable to suppose that the contractors would push forward, and complete their contracts. But these reasonable expectations have in some cases been disappointed; and this is the only point in the State at which the contractors have willingly relinquished and abandoned their contracts; and the reasons assigned for doing so, are, that the work cannot be done for the contract prices.

Three contracts providing for grading and macadamizing the road through Indianapolis and immediately east and west of the city were abandoned. “The lateness of the period at which these contracts were relinquished, made it impossible to relet them, and to have more than one stratum of metal put on the road during the season.” The single stratum “would have been ground down, and buried in the earth long before spring,” resulting in a waste of the expenditure. Two other contracts, for grading and macadamizing, were relet and were “progressing rapidly, and there is every reason to hope that the works will be completed according to the stipulations of the contracts.”

The contracts awarded at Richmond and Terre Haute were progressing satisfactorily.

For the work planned in 1838, he would need \$500,000.

Switching to Illinois, Captain Ogden reported that in 1836, most work had been on the portion of road between the Indiana border and a point 30 miles west of it. Later in the season, work commenced in the vicinity of Vandalia:

But the officer having the immediate charge of this division of the road being ordered to join his regiment, the operations were discontinued soon after their commencement.

Overall, the work of grading, quarrying and hauling stone, and cutting stone was halted about December 1 due to unfavorable weather. “Some portions of the grade were finished, but the greater part of it was left, at the close of operations, in an unfinished state.”

Because the Act of March 3, 1837, made “so radical a change in the method of conducting the operations,” he allowed previous work to be completed by hired hands, but had to conduct “an entire new survey and estimate of those portions of the road intended to be put under contract.” He dispatched an assistant engineer to Vandalia to conduct the needed work, “but his health being ill, and it being impossible to furnish him with any aid, until after the lettings in Indiana . . . the operations, at this point, were necessarily delayed until late in the season.”

Others joined the engineer at Vandalia around July 1, and on July 20, the first lettings for Illinois took place. The last sections put under contract at Vandalia were let on August 12, 1837. Between August 31 and September 25, additional contracts were let at Marshall for work east of Vandalia. Overall, 21 sections were put under contract during the 1837 season, with the work contracted for at \$27,543.71 over engineer’s estimates.

All in all, the “road, to the termination of its location at Vandalia, has been opened throughout its whole extent”:

Those portions of the grade which have been finished make a firm, smooth, and delightful road During the greater portion of the year the road may be travelled with comparative ease; but during the thaws of the spring, and the seasons of heavy rains, it cannot be passed without great fatigue and difficulty.

He estimated that completing the road in Illinois would cost \$300,000. “The above amount of \$300,000, it is respectfully recommended may be furnished at as early a day as practicable.”

Captain Ogden concluded his reported with remarks on the road in the two States. Because completion of the road depended on unpredictable appropriations, he could not estimate how long it would take. He estimated that if the funds were made available without delay, the work could be completed in 3 years, with the possible exception of the Wabash River bridge. He summarized:

The history of these works, since they came under the charge of their present superintendent, has been one of difficulty and embarrassment throughout, arising partly out of the nature of the previous operations; the character and scarcity of labor; the small amounts and unseasonableness of the appropriations; the restrictions and changes in the method of conducting the operations; the difficulty of making disbursements; the magnitude and extent of the charge on the superintendent; and the shifting and unsettled character of the assistance allowed him.

Since 1834, an entire change has taken place in the character of the materials and workmanship employed in the construction of the road.

The recent switch to contracts resulted in a “loss to the works of a great portion of the season.”

He concluded his report with a discussion of how personal liability for disbursements over a road in two States had caused “many difficulties”:

As a last resort, propositions were submitted to the different banks along the line of the road. The only terms that could be offered were that the banks should receive the money on desposite, make out the accounts, and pay off laborers, contractors, or others, without expense to the United States or to the superintendent. Onerous as the conditions might appear, they were freely accepted by some of the banks, and were, in consequence of voluntary arrangements among the citizens, finally acceded to by all. These institutions are now making the disbursements for the road; but, by a single order of the directors, the arrangement could be destroyed, and difficulty and embarrassment would inevitable ensure. The speedy adoption of some measures by which the liability to such results may be removed, and by which the money may be disbursed with regularity and certainty, is earnestly but respectfully recommended. [*Message from the President of the United States to the Two Houses of Congress, 25th Congress, 2d Session, Doc. No. 1*]

The Fight for Dollars

Despite President Van Buren’s well-known opposition to appropriations for internal improvements in the absence of a constitutional amendment, friends of the Cumberland Road were ready to try again for funds to continue construction.

In December 1837, they introduced bills in the Senate and House for continuation of the Cumberland Road in Ohio, Indiana, and Illinois. Debates would take place, but with little discussion of constitutional issues. The driving issue was the jealousy of the States that were not receiving funds for internal improvements – unlike Ohio, Indiana, and Illinois – as well as the usual desire never to hear about the Cumberland Road again.

On December 21, 1837, Indiana Senator Tipton reported a bill appropriating \$1,100,000 for the extension through Ohio, Indiana, and Illinois. It was ordered to a second reading.

The Senate began debate on the bill on February 21, 1838. As soon as Senator Tipton called for taking up the bill, Senator John Norvell of Michigan submitted an amendment and moved to lay the bill on the table and print the amendment. He was a Democrat who had joined the Senate after Michigan became a State on January 26, 1837. His amendment called for public land to be granted to several States, including Michigan, for purposes of using revenue from the sale of the land for internal improvements. Each grouping of States was to receive a grant of public lands “equal to the number of acres which have been granted by Congress to the State of Ohio.” Proceeds from land sales were to be used for roads, bridges, and canals, as well as improvement of water-courses, and the draining of swamps, “and such roads, canals, bridges, and water-courses, when made or improved, shall [serve] for the transportation of the United States mail and munitions of war, and for the passage of their troops, without the payment of any toll whatever”:

The amendment, he said, was a very important one, and one that properly ought to be tacked to the bill. It was a kindred subject also; and by moving to attach it to the bill, he wished to learn whether the treasures of the Government were to be monopolized by two or three States only.

Senator Benton said he would support the proposal if it were a separate bill. "As an amendment to the bill, however, he held it to be an incumbrance, and calculated to embarrass its passage." As long as he had been in the Senate, he said, each Cumberland Road bill "never had any other matter appended to it."

Senator Ambrose H. Sevier of Arkansas agreed that Cumberland Road bills always were unencumbered. In addition, however, they came with surveys and estimates:

It was considered beneficial in a national point of view, like the motion before us, and an appropriation was made, it was generally considered that we were bound to go on with it, and the appropriations were made from time to time; but in the case of the amendment, we were asked to attach it to a bill belonging on an exclusive object, without surveys, estimates, or anything to guide us in our research.

Like Senator Benton, Senator Sevier did not object to the substance of the amendment, only to its being attached to the Cumberland Road bill. He thought that Senator Novell, by insisting on his amendment, appeared to be trying to embarrass the bill.

Alabama Senator King took exception to the "exceeding liberality" of Senator Sevier:

The gentleman went from appropriation after appropriation for roads in Arkansas, because he said they were "roads commenced and not completed." We appropriated the other day, said Mr. K. for roads in Arkansas, and they were called military roads, because they lead to a temporary garrison, which the Secretary of War may abandon at his pleasure. But, continued Mr. K. when we tried to get a small appropriation for a military road in Alabama, on which twenty thousand dollars have been expended, we could not get it either on the plea of its having been commenced and not completed, or it being a military road. We were told, said he, that it was altogether unconstitutional; that when the appropriation was made it was rightly done, because the road was in Indian country, but that now the Indian title was extinguished, the State of Alabama must make the road herself. He then tried to get the road out of the two per cent. fund belonging to his State, but this appropriation of a few thousand was refused on the ground that the two per cent. fund was to be reserved for making roads leading to the State, and that was within it.

The bill appropriated \$300,000 for the road in Illinois, but Senator King referred to the dispute about the terminus on the Mississippi River. "Was it a road commenced when they did not know where it was to be?" Further, because the Cumberland Road was to be built with proceeds from the two-percent fund, "gentlemen seemed to be forgetting all constitutional scruples with regard to it." The government had spent far more on the road

than could be reimbursed from the fund – at least “ten times more,” according to Senator King:

There never was so extravagant an expenditure of the public money, as had been made on some parts of this road, and such a road as some considerable portions of it was not to be seen in any country. Several years ago, when the Senator from Kentucky took part in the debate on this road bill, he showed that it was not possible to construct an important part of it, without such an expense that ought not to be thought of.

Based on Senator Clay’s presentation, the Senate had “limited the appropriation” to opening the road. “Now they were called on for these heavy appropriations, without knowing where this road was to go, or what further expenses it would involve.” Was the road going on to Texas? Across the Rocky Mountains? To the Columbia River? No one knew.

Senator King also recalled the battles of past years:

He had looked at this Cumberland road for many years. It was an old offender against the Constitution and law of the land; so much so, that gentlemen who supported it had no means to satisfy their constitutional scruples but by putting a direct fraud in the bill. A clause in the bill declared that the appropriation was to be paid out of the two per cent. reserved for making roads to these States, when it was notorious that every dollar of this fund had been long ago exhausted, and that there would not be another dollar of it for a hundred years to come.

He regretted having to be so blunt but the “strenuous objections” to Senator Norvell’s reasonable and just amendment required him to question “the propriety of continuing the bounty of the Government to two or three States, and refusing it to others, who had received nothing.” Senator King would vote against the bill because of constitutional concerns, but first he wanted to see an amendment made to it that “would be doing something like equal justice.” The original goal of the legislation that President Jefferson signed was to get across the mountains, “and when that was done, it ought not to have gone farther.”

Senator Robert J. Walker of Mississippi agreed. When Alabama and Mississippi had sought appropriations for internal improvements, the Senate voted it down. And yet, “now we see (said Mr. W.) two or three States, that have received donations of millions of acres for purposes of internal improvement, calling upon an exhausted Treasury for a million of dollars which we should have to borrow.” He urged the Senators to “look at the enormity of such a measure, and the prejudicial bearing it would have upon the whole Confederacy.”

The bill, with its supposed reliance on the two-percent fund, was “a palpable fraud upon the very face of the documents, and yet we were called upon to vote for it.” It was not a national object, but would benefit only a few States, with the money coming out of his constituents’ pockets:

The people of Alton and St. Louis were quarreling about the point at which the road should pass, and by and by we should have the same disputes about passing Texas or the Rocky Mountains. If the Senate did not check it now, it would never stop.

In summary, “Mr. W. said it was partial, iniquitous, and unjust, and he, for one, would never see injustice or inequality prevail without lifting his voice against them.”

Senator Oliver H. Smith of Indiana acknowledged that Senators King and Walker had revived “the old opposition . . . with a laudable zeal.” He, like Senator Benton, thought the bill should stand on its own, without the Norvell Amendment. He had not examined it closely, but would not support it “simply because it embraced objects new in themselves, and in no wise connected with the plain and simple matter before them.” He hoped Senator Norvell would withdraw the amendment so the bill could proceed without delay.

Senator Sevier took the floor again, noting that when he had spoken earlier, he had no idea the debate on the Cumberland Road would be reopened in such a fashion. He had merely explained why he did not support the Norvell Amendment. But since Senator Walker had described the clause in the bill regarding the two-percent fund as a “palpable fraud,” Senator Sevier wanted to remind his colleagues of why the phrase was in the bill by recalling the 1836 legislation:

He had voted against it, and it was struck out; but, on the bill being sent to the other House, it was ascertained that it would be vetoed without the clause; and it was, therefore, put in there by way of amendment; and, coming back to the Senate, passed through, notwithstanding the constitutional scruples of gentlemen who had before voted against it. General Jackson, the great Apollo of the South, required it to hold the States to their bargain, and it was put in to remove his constitutional scruples and to sooth the consciences of his friends. To say, therefore, that this clause was a palpable fraud, came with a bad grace from gentlemen on that side, when it was put in to satisfy their constitutional scruples.

If the Norvell Amendment were adopted, without estimates of project costs, and the Senate approved the bill, it would go to the House, which would stop it “because that body never will pass an appropriation, without having the estimates and all other necessary information before them”:

And more: the President who professes to follow in the footsteps of his predecessor will veto the bill, because it contains new objects, and then we shall have no Cumberland road at all.

Senator Norvell defended his amendment. He thought it was “a little extraordinary” to hear about the absence of estimates and old roads and new roads. He pointed out that “the proposition was not for the construction of a road, but for a grant of land to certain of the new States for the purposes of internal improvement, who had hitherto received nothing of the kind – a grant which had been made several times before.” He offered the

amendment in good faith. If it were added to the Cumberland Road bill, he would vote for the bill but only “if the clause about reimbursement was stricken out.” He could not vote for the bill otherwise, “consistent with his ideas of justice.”

Senator Richard M. Young of Illinois thought the amendment “was of a very extraordinary nature – a kind of dog and manger policy. Because they could not get what they wanted, they would vote against the bill.” This attitude was “suicidal.” He said, “The whole country has been more or less benefited by the Cumberland road, and he hoped gentlemen would not now seek to embarrass or defeat it.” The issue of Alton versus St. Louis had nothing to do with the present bill. It could “at any time be adjusted by the people of their respective States, without trouble.”

Senator Walker was not persuaded. He said, “there could be no more just grounds for voting against an appropriation than because it was unequal.” If the appropriation benefited the whole country, “it would be a different affair; but it was rather unreasonable for twenty-three States to be told that they are wanting in liberality and public spirit, because they vote against a monopoly.” Expecting him to support taking money out of his constituents’ pockets “for the purpose of perpetrating this system of monopoly, was asking more of these States than they could reasonably be expected to grant.”

At Senator Benton’s suggestion, the amendment was to be printed and, in the meantime, the Senate adjourned.

The Senate took up the Cumberland Road bill again on March 27. The *Globe* did not detail the discussion, summarizing it instead:

The bill was opposed mainly on the ground of the existing embarrassments and bankruptcy of the Government; partly on that of the want of sufficient information, and partly on that of the inequality and injustice of the appropriation which it involved.

The bill was laid on the table:

On motion of Mr. BUCHANAN, the Secretary of War was directed to inform the Senate what portions of the estimates for the construction of the Cumberland road in Ohio, Indiana, and Illinois, might be dispensed with without injury to the road, and without violating existing contracts.

This request halted consideration of the bill until the Secretary of War’s report was received.

The House also was working on a bill appropriating funds for the western extension of the Cumberland Road. Kentucky’s Representative John Pope of the Committee of Ways and Means had reported a bill on December 28, 1837, and it was committed to a Committee of the Whole on the state of the Union.

Initial discussions of the bill, judging from the *Globe*, were perfunctory.

On March 29, Ohio Representative Mason brought the bill up to the Committee of the Whole. He moved an amendment “providing a change in the mode of superintendence of the road, but subsequently withdrew the motion.”

Representative McKennan, on behalf of the Committee on Roads and Canals, moved an amendment “to provide for the erection of guard fences on the road east of the Ohio, and for widening the same at Laurel Hill, and for the payment of the expense incurred in the erection of toll-houses on said road.” The committee adopted the amendment, 72 to 50, then voted the bill to the full House. The *Globe* referred to “a few remarks” but did not elaborate on them.

The background for the amendment is that the House had adopted a resolution, introduced by Representative McKennan, on December 11, 1837:

Resolved, That the Secretary of War be directed to report to this House a plan for the erection of fences or guard-posts where they may be necessary for the safety of the travel on the National road from Cumberland to Wheeling, accompanied with an estimate of the expense in making the improvement.

Secretary Poinsett submitted the report on January 29, 1838. He transmitted a letter from Captain Delafield, who wrote that in crossing the mountains, “we find the road-way passes up and down the sides of the different ridges, with inclinations varying from a fraction over one degree, to as high a grade as six degrees, or 554.9 feet to the mile. At the same time, the inclination of the hill-side is most generally forty-five degrees; and, in many places, between that slope and vertical.”

The horizontal direction of the road was “very winding or tortuous, often turning suddenly to the right and left – at all angles between the right line and a right angle; and, in a few cases, even with an acute angle.” In all seasons, this condition “renders risk and danger” to travelers, especially at night. “Great skill and a perfect knowledge of every turn of the road, on the part of the conductors of the public conveyances, alone secure them from repeated accidents; and private travel seldom, or never encounters these difficulties at night.” However, the risk was much increased during winter:

The ditches, after a few days of freezing weather, becoming filled with ice, cease to conduct the water from the innumerable springs in the hill-side to the culverts. Its only escape is then across the face of the road; and, by continued supplies of water and action of frosts, there ceases to be any ditch; the face of the road, at these positions, then becomes covered with ice, inclining outwards towards the precipice, instead of retaining the constructed profile of the road, sloping inwards towards the hills. At such times, a carriage of any kind descending the mountain is constantly slipping towards the valley, and is only kept on the road by skilful management.

When this ice formation takes place at the turn of the road, the centre of which curve lies within the mountain slope, then a descending carriage, with the velocity it acquires coming down the mountain, is always in danger of being thrown

outwards by its centrifugal force; and, at times, it becomes truly dangerous for every description of carriage.

In reconstructing the road according to the McAdam system, the engineers had been forced to construct, all on the steep grades, “across the face of the road, at distances varying from 20 to 50 rods, catch-waters. The object was “to prevent the accumulating volume and velocity of the rain-water passing down the face of the road, and thus washing off the material. When the catch-waters became filled with ice, they were “another fruitful source of accident”:

Other risks are to be encountered after a fall of snow, and before the track is beaten. At night, it is then extremely difficult to keep the centre of the road, and the risk of encroaching upon the precipice is thereby much increased.

These are very far from imaginary risks and dangers; accidents have frequently happened, and lives have been lost.

As a corrective, Captain Delafield suggested the erection of a post-and-rail fence “to serve as an unerring guide for the horses and drivers; and in case of the carriages slipping so near the precipice as to be in danger, the wheels will find sufficient resistance from the posts, and the body of the carriage from the rails, to prevent its being thrown off the side road”:

The plan that appears to give all the requisites for these guard-fences and posts, is to set posts about three and a half feet in the ground, charred or burnt on the surface to a coal, to guard against rot, distance seven feet from centre to centre, of five by eight inches square, surmounted by a rail of four by eight inches square, secured on the tops of the posts, at a height of four feet above ground, by a mortise and tenon pinned together; care being taken not to mortise through the rail to admit the weather and thus hasten its decay; and the whole to be so much inclined outwards that the hubs of the wheels will not injure the posts and rails.

He estimated the cost for erection of the guard-posts to be \$18,571.74.

In converting the road to the McAdam plan, engineers would have erected guard-posts on the most dangerous parts of the road, “but after applying the funds appropriated to the most important parts,” the balance of funding was insufficient. The State commissioners accepted the road without guard-posts, then found that receipts from tolls were sufficient only for repair of the road, not erection of the protective barrier:

These commissioners have been unable to do any part of this fencing, from the amount of tolls collected being too limited to keep the face of the road in the order they could wish. During the past year the tolls collected amounted –

In Maryland, to	\$ 9,600.00
In Pennsylvania, to	\$ 15,009.98
And in Virginia, to	<u>\$ 4,200.00</u>
Total	\$28,809.98

The whole of which has been applied to the repair of the road, with the exception of a portion the commissioners in each State were compelled to apply to finishing the toll-houses and erecting the gates.

Captain Delafield had advertised the construction of toll-houses and gates, “and turned over the commissioners the sum bid for their completion.” However, this was “the period of great fluctuation in prices of material and workmanship.” As a result, the commissioners were unable to complete the work “for the sum provided them from the appropriation.” They “had to take the tolls of the road to perfect this part of the work, to the following amounts:

In Maryland, where one toll-house remains unfinished:	\$ 175.00
In Pennsylvania (on account of five toll houses, of which the sum of \$250 is now due and pledged by the road commissioners from the tolls):	\$1,103.26
And in Virginia, on account of one toll-house:	<u>\$ 150.00</u>
Total:	\$ 1,428.26

That amount, plus the cost of erecting guard-fences, gave a total of \$20,000 “that could be very advantageously applied to promote the public welfare and interest of a large portion of the people of the country.” [*Guard-Posts – National Road*, Letter from the Secretary of War, Ho. of Reps War Dept., 25th Congress, 2d Session, Doc. No. 134]

The House took up the bill, on its third reading, on April 11 to consider the amendment approved in the Committee of the Whole:

The question was on concurring with the Committee of the Whole in an additional section, making appropriations for guard fences on the road east of the Ohio, for widening the road leading down Laurel Hill, etc.

Representative Joseph R. Underwood of Kentucky moved to recommit the bill to the Ways and Means Committee, “with instructions to report a bill ceding the Cumberland road to the States through which it passes west of the Ohio, as had been done in reference to that part of it east of the river, and asked for the yeas and nays thereon.” The *Globe* did not describe Representative Underwood’s explanation of the motion, although comments by others suggested the contents.

Representative John Campbell of South Carolina, in seconding the motion, said he appreciated Representative Underwood’s motion, especially coming from him, and thought it was “indicative of a better feeling upon the subject of public expenditure, and hoped, if successful, that an eternal separation would take place between the Government and this favorite object of internal improvement.”

He recalled that the Cumberland Road dated to the Enabling Act in 1802 for Ohio. “Whether it was then supposed that this would become, what it has long since been, a charge upon the public Treasury, it is not material to inquire.” However, if our understanding of constitutional authority “were settled by precedent, the frequent appropriations for this road, extending through a period of more than thirty years, would

be sufficient to establish the constitutionality of this bill.” He did not intend to condemn the policy that resulted in the start of this road. That the view today was very different from the view then, Representative Campbell illustrated by quoting from Senator Uriah Tracy’s 1805 committee report, quoted earlier:

Politicians have generally agreed that rivers unite the interest and promote the friendship of those who inhabit their banks, while mountains, on the contrary, tend to the estrangement of those who are separated by their intervention. In the present case, to make the crooked ways straight and rough ways smooth, will, in effect, remove the intervening mountains, and, by facilitating the intercourse of our western brethren with those on the Atlantic, substantially unite them *in interest*, which the committee believe to be the only efficient cement of union applicable to the human race.

Representative Campbell informed his colleagues that these goals had been achieved. “The crooked ways have been made straight, the rough ways smooth, the intervening mountains have been scaled – not by this road only, but by numerous communications that owe their existence, not to Governmental patronage, but to individual enterprise; to enterprise prompted by enlightened views of commercial advantages, and the strong stimulant arising from the hope of individual wealth.”

Further, other formidable arguments from 1805 had lost their force:

Formidable tribes of savages at that time being upon the skirts of our infant settlements on the western side of the Alleghany Mountains, for whose defense it may have been proper to form a communication by this road with the Atlantic border. How changed is the prospect? The magician has waived his wand, and the transitions have been as rapid as the shifting scenes of a moving panorama!

Those infant settlements have sprung up into flourishing communities; the extended forest that then reposed in the deep solitude of primeval silence, is now a cultivated country, whose fields teem with fertility, whose towns and villages and cities resound with the hum of busy multitudes. Over a country, at that time untrodden, save by the foot of the untutored Indian or solitary trapper, independent States now hold sway over a population, numerous, intelligent, patriotic, brave; a population that, except on the extreme frontier, is so far from requiring defence from others, we must look to with pride and pleasure as being not only able but willing to afford effectual assistance to their Atlantic brethren should they ever be invaded by a foreign foe.

The Cumberland Road had been completed well into Ohio, “and has been worked upon in different places as far west as Vandalia, in Illinois, within less than 100 miles of St. Louis.” He acknowledged the argument that the appropriations could help connect the different parts to make them available:

But look, sir, said he, to the condition of the Treasury. The report made a few days since by the Committee of Ways and Means shows that on the first of

January last, *there was less than five hundred thousand dollars* in the Treasury of the United States applicable to public expenditures. In the same report the estimated resources of the present year, including \$7,000,000 of Treasury notes, are placed at \$31,000,000. Of which \$13,000,000 are estimated as the receipts from customs, and \$3,000,000 from public lands; both of which resources are admitted, in the present condition of the country, to be uncertain.

Nobody could predict with certainty what revenues would be available:

It must, however, be obvious to all, that the fever of land speculation, which, under the influence of credits easily obtained, had been stimulated almost to delirium, is rapidly subsiding, and that the purchases of the public land will for the present year be limited almost exclusively to the demand for settlements. This last demand will be diminished at the public sales, from the strong and pernicious tendency to seize upon the best portions of the public domain not yet brought into market. He observed some of the representatives from the new States smile incredulously at this assertion. But with the most respectful defence to those who advocated this system, he could not but think that it held out an inducement to avarice that operated unfavorably upon the morals of our pioneer population.

Representative Campbell's comment, which he acknowledged was a digression, was a reference to "preemption," which had been debated in the Senate earlier that year on the initiative of Mississippi Senator Walker of Mississippi (who would serve as Secretary of the Treasury under President Polk (1845–1849)). The Heidlers discussed preemption in their biography of Clay. Referring to the period before the Panic of 1837, they wrote:

Clay still hoped to distribute that money to the states for internal improvements and colonization. Widespread support for distribution included some Democrats under political pressure from constituents eager to receive the money. Yet western senators persisted in their wish to reduce the price of federal lands, a move sure to endanger the surplus, and Clay had to fight them at every turn. At the end of March 1836, he stoutly opposed Robert J. Walker's plan to reduce land prices for people who had settled on public property. Walker wanted to grant them "preemption," which meant exclusive rights to purchase land at bottom dollar. Clay called these people squatters, a term Walker found objectionable when applied to those he claimed were the backbone of the nation, the very men who had fought under Jackson at New Orleans. Walker exclaimed that if the men Clay derided as squatters had been in Washington in 1814, they would have saved the city from the British torch. The gallery loved this sort of talk, and it greeted Walker's tribute to patriotic American yeomanry with loud applause. Clay waited for everyone to settle down. He innocently claimed no disrespect to squatters but impishly added that he "hardly thought they would have saved the Capitol unless they had given up their habits of squatting."

After the panic began, Senator Walker revived his preemption proposal. When he again spoke of the settlers in positive terms during a debate in early 1838, Clay "lost his temper":

He heatedly asked why it was proper for those squatters “to seize upon and rob the United States of their possessions.” When Indiana’s John Tipton objected to Clay’s defaming his constituents, Clay heedlessly characterized squatters as a “lawless rabble.”

That phrase, as the Heidlers noted, would be used against Senator Clay in later debates, during which he was depicted as an enemy of the new States and their inhabitants. Senator Clay would deny using the phrase, but it was cited in the *Globe* on January 27, 1838.

Senator Campbell summarized the budget situation, saying his colleagues were “sailing under a clear sky, with propitious breezes, over a summer sea. But do you see no speck on the political horizon?” It was not a speck, but a cloud or a dark shadow. He warned of the consequence of a national debt:

If we contract a national debt, the “compromise act of 1832,” which brought peace to a distracted country, will prove but a rope of sand to an increase of duties. Yea, more, the very next revolution of the political wheel may bring those into power who will not hesitate to direct the duties upon importations, constitutionally imposed only as a means of raising revenue to pay the legitimate expenditures of the Government, to objects of protection.

Representative Campbell, who listed his party during this Congress as a Nullifier (otherwise he was a Jacksonian or Democrat), probably meant the Compromise of 1833, which helped end the nullification crisis provoked by the 1832 tariff bill.

“The clamorous importunities of partial interests would again intrude upon our deliberations, and the American Congress be again converted into an arena for the most bitter contests.” The key was to avoid contracting a national debt. He listed bills the House had passed in the last 2 hours, including:

. . . appropriations for an exploring expedition, for the employment of naturalists, geologists, botanists, to examine the animals, soils, and plants of distant lands, subjects with which this Government has as much to do with as with the “vespertilio home,” or man-bat of the moon.

The expedition Representative Campbell cited was the United States South Seas Exploring Expedition of 1838-1842. It consisted of six vessels and 346 men, including scientists and artists, whose goal was to provide navigation charts to whalers, sealers, and China traders. His colleagues would have been familiar with the man-bat of the moon. The “Great Moon Hoax” began in New York’s *The Sun* newspaper in August 1835. According to the hoax, an astronomer had discovered life on the moon, including man-bats.

By appropriating funds for unnecessary activities such as these, they were “sowing the seeds of bitterness between the different sections of the Union.”

The House, he said, did not have to debate the constitutional issues involved in the present bill. The condition of the Treasury was “surely more than a sufficient excuse” to recommit the bill. He added:

In 1830, when General Jackson placed his veto on the Maysville road bill, it was said in this hall that he had raised to his memory a more imperishable monument than when he won the glorious victory that preserved the queen of our Southern cities from the pollution of a conquering foe, and, with her safety, the honor of the country. And yet, if he was not mistaken, he heard an honorable gentleman from Virginia [Mr. Mercer] congratulate the House a few days since that more extensive appropriations by the Government for objects of internal improvement had been made since that time than during any other equal period in our history!

Appropriations for internal improvements inevitably were “partial in their operation, tending to the benefit of particular sections at the expense of the whole, and therefore inconsistent with that equality upon which our institutions are founded”:

To remove this objection – to make appropriations sufficiently extensive to embrace every section of the country having, or claiming to have, objects worthy of Governmental patronage, would create a vortex of expenditure that would engulf the diamonds of Golconda and the gold of Peru – would require a revenue, the collection of which would produce a wide-spread ruin, and, after exhausting the resources of the country, would be insufficient to accomplish the object.

Representative Campbell also rejected the argument that appropriations for the Cumberland Road would enhance the value of public lands in the States it passed through. The same argument, he said, “will apply in favor of the construction of roads into every wilderness where the Government owns land.” Large numbers of people have migrated to the new States “with a rapidity unequalled in the annals of the world,” leaving behind good soil in the old States to “encounter the hardships and privations preparatory to converting the wilderness into a garden. Can any one, with these facts before us, contend that additional inducements to emigration are even desirable?”

He hoped his colleagues would support the motion to recommit the bill “to relieve ourselves of a work whose constitutionality is doubtful, whose benefit is partial, and appropriations for continuing which, in the present condition of the Treasury, must bring on us the reproach of reckless extravagance.” Let the States take over the road to be “sanctioned by the enlightened liberality of their citizens, and paid for by those who enjoy the advantage.”

Indiana Representative Ratliff Boon said he was surprised by the remarks of the gentleman from Kentucky, Whig Representative Underwood:

That gentleman had declared that he considered any system of internal improvement by the General Government as being now entirely defunct. This Mr. B was sorry to hear from a professed friend of the measure, as he had not expected to hear such a declaration from any member of a party in politics who

claim to be the exclusive friends and supporters of all the great interests of the country.

Representative Boon said that since coming to the House in 1825, he had been “in favor of a proper system of internal improvements by the General Government”:

But it seems that the gentleman from Kentucky has changed his views in reference to the subject, and he has very frankly stated his reasons for having done so; and I was pleased to hear him come out and avow his future objects in terms so bold and manly as he has done on this occasion.

Now, Representative Boon said, the gentleman from Kentucky favored ceding the road to the States “in its present unfinished state,” to be completed by the States, and the revenue from the sale of public lands should be distributed among the 26 States “to make their own works of internal improvement.” Representative Boon opposed any system of raising revenue for distribution:

We have recently experienced the bad effects of a distribution of the surplus revenue among the several States. It was found that before the fourth installment of the surplus revenue was deposited with the States, the Treasury of the United States was deficient in revenue over nine millions of dollars.

And yet, said Representative Boon, Representative Underwood “is in favor of withholding, or withdrawing the whole amount of revenue received from the sales of the public lands from the Treasury of the United States, to be scrambled for, and wasted by the twenty-six States of the Union.” The difference would have to be made up by an increase in tariffs. He favored a tariff that raised revenue “and the giving of reasonable and just protection to home industry.”

As for the Cumberland Road, it was being built in compliance with the compacts entered into when the States joined the union:

In Ohio, this road is completed to some twenty miles west of Columbus. In the States of Indiana and Illinois the grubbing of the road has been completed, and considerable progress has been made in grading and erecting bridges, without any portion of the road having been completed in either of those States, and now the gentleman from Kentucky proposes that the General Government shall abandon this great national improvement, and surrender it, in its present unfinished condition, to the States through which it passes.

He would simply ask his colleagues, “who have heretofore voted for appropriations for carrying on this great work of national importance, to say whether they are now prepared to abandon it to its fate”:

Sir, the construction of this road over the mountains and through the new States, has and will induce many thousands to emigrate to the West and purchase the Government lands, by which means your Treasury will be more than reimbursed for all that will be required to complete this great work. I hope, therefore, that the

friends of this road will promptly reject the proposition of the gentleman from Kentucky, and that the bill may be passed without further delay.

Representative Ewing rose to express surprise at Representative Campbell's remarks as well as the views expressed by Representative Underwood. Referring to the latter, Representative Ewing said, "It indicates a new state of feeling when this gentleman can be found, upon the subject of internal improvement, acting at this time of day in harmony with the doctrine of South Carolina." He was skeptical of their true motives:

Upon the one side discord seems to have arisen on account of the Louisville canal; and the evident desire to withhold this appropriation on account of prospective tariff views has been distinctly announced upon the other.

As for the canal, he informed the gentleman from Kentucky that it was a State project, "not constructed under a compact with the United States; and further, to tell him that he greatly overrates his sagacity and intellectual strength if he thinks he can break down the obligations entered into by solemn contracts, and acted upon for thirty years, yet still hold the new States bound by their stipulations in relation to the sovereignty of the soil."

He informed the gentleman from South Carolina, Representative Campbell, "with equal plainness, that the liberality and enlightened spirit which once characterized many of the statesmen of the South must have departed, if he thinks the people of the West will allow imposition to prevail forever, and a national treasury replenished, not by a protective tariff, but by sales of public lands, five years exempt from taxation, to be wasted in schemes of useless fortifications and injurious breakwaters."

The gentleman from Kentucky denied the validity of the compacts and would set them aside:

I must say, he thinks he has more wisdom than I believe him to possess when he thus overlooks the matured action of those who framed the compacts and their binding validity

The gentleman talks of economy and an exhausted Treasury, and appeals to his political friends to arrest all such expenditures. The gentleman says nothing of the equal rights and sovereignty of the States under the Constitution, of the amount of taxation relinquished by the new States, of the fact that the United States, although allowed to extinguish Indian titles, are prohibited from an ownership in property, except for forts, arsenals, &c. to be allowed by the several States wherein they are located, unless by compact.

He omits to tell us what, if anything, Virginia, Maryland, and Pennsylvania, though [sic] which this road passes, have paid towards its completion, and forgets that this economy would be wild extravagance, if the road west of Ohio were now permitted to go to decay for want of means.

The Cumberland Road was "not a sectional or party character, and can in no way minister to party rancor or personal ambition":

I hope it is with the gentleman's Louisville canal as it once was with my toothache. I was told not to have the tooth extracted; it was a very important tooth, and a dangerous operation. Somewhat alarmed, I had it extracted notwithstanding, and immediate relief, without inconvenience, followed; and may it not be that the consequences of completing the Cumberland road will equally disappoint his fears, and tend not only to leave all the business necessary to sustain that small excavation, but also to employ the work of much greater dimensions, and much less expense, now about to be constructed on the Jeffersonville side, where a canal should have first been constructed. But let that pass.

In short, Representative Ewing said, Representative Underwood could not take the "good faith of the government" away or repeal congressional contracts that carry with them "constitutional obligations for contracts under which this road is to be constructed":

It stands, as I have endeavored to show, upon distinct and different grounds, and no condition of the Treasury, no change of policy on the part of the gentleman, can exonerate this Government from acknowledging its obligations

Representative Ewing also discussed the specifics of the motion in debate:

I can tell this House and this country, that when this road shall be arbitrarily relinquished or ceded to the States through which it runs, without first being completed, or certain provisions made for its completion and for bridging the streams over which it may pass, it will be found that the public domain itself will be relinquished and ceded by the same arbitrary act. Then, indeed, the new States, after much trouble, and many partial exactions, will stand upon the equal footing which the Constitution of the United States contemplated, and their State rights will then be defended.

The inhabitants of the new States paid for the public domain, and their payments helped the country extinguish the national debt. "They fought for your homes before they travelled West, and in the new States they relinquished their sovereignty and ownership over the soil, to enable you to redeem the obligations thereby incurred":

Yet the gentleman from South Carolina has brought the pre-emption bill into this discussion, as though it was an extravagant appropriation, made only for the benefit of the West. The public land topic, involving as it does, the harmony, union and equality of the States, is of too much importance to be discussed upon the present occasion. If the wise system, matured by the pre-eminent statesman from Kentucky, in the other end of this building and adopted by Congress, had not been vetoed by a President who urged upon Congress to dispense altogether with the public lands as an object of revenue, then the truckling system of his successor, walking in his footsteps, whose financial views the gentleman from South Carolina now in part supports, would never have engendered heart-burnings and dissensions, with speculations and peculations and party subserviency; nor would the laboring settler of the West, seeking a home for

himself and his offspring, after improving the soil, and securing by his industry, the means of future competency, have to come here under the auspices of a specie-paying circular, asking of the Government the first right to buy the land which he himself had given value to by his own improvements. The gentleman may take my word for it, if speculations can follow a pre-emption law in Indiana, the speculators will come from other quarters of the country; the South and the East will furnish them. And speaking of Southern settlers, I only lament their numbers have not been more rapidly increased.

The two gentlemen, Representative Ewing continued, seemed to deny that the Cumberland Road was “an object of great national importance at this time.” Its military value was “now said to be of no avail.” The Ohio River, although blocked by ice for several months each year, was “now sufficient for transportation of munitions of war”:

But do we want no mail facilities? No facilities for commerce? None for social intercourse? Is every other interest to yield to military considerations? Sir, the paths of military conquest and glory lead but to the grave of our prosperity. Sir, the whole country, in all her relations, moral, social, political, agricultural, commercial, and mechanical, cries aloud for this appropriation, and will no longer be swayed by considerations of vainglory; nor can any considerations of this character be allowed to overlook this call, or trample upon and cast aside the public faith and public welfare upon which it is founded.

He would not reply to “all the oft-repeated and oft-refuted objections against appropriations for this road” or the compacts enacted for its construction:

But there is a report of the Secretary of War upon our table, in compliance with a resolution of the other branch of the Legislature, showing what reductions might be made without doing injury to such parts of the road as have already been commenced, “without violating existing contracts.” By which it appears that a bill had been reported in that body appropriating more than double the amount embraced in this bill; and with a view to effect the object which led to the call, a much larger sum is absolutely required than is embraced by the provisions of the bill before the House. The reduced estimates in the report adverted to is, for Indiana alone, \$266,000, and this sum should now be allowed.

But at this time I will not trespass upon the urbanity and good feeling of the gentlemen who argue against the smaller sum in the bill before us; our after action can remedy this defect.

I could now almost appeal to the gentleman from Kentucky in the language of Colonel Ethan Allen, at Ticonderoga, during the Revolutionary war, “In the name of Great Jehovah and the Continental Congress,” to withdraw his motion to recommit this bill.

(The quote comes from May 11, 1775, when American forces, led by Benedict Arnold and Ethan Allen, captured Fort Ticonderoga on Lake Champlain. Surprising the troops

stationed there, Allen called out to the British commander, "Come out of there, you damned old rat!" When the commander asked on whose authority, Allen replied, "in the name of Great Jehovah and the Continental Congress." The fort soon fell without a shot being fired.)

Although Representative Underwood may not withdraw his motion, Representative Ewing thought its defeat was inevitable. Nevertheless, he offered an amendment to the Underwood Amendment covering "the only equitable and legal mode of transfer" to be included in the instructions if the present bill is, as Representative Underwood proposed, recommitted to committee:

. . . that the surrender of the road to the States through which it passed, shall be accompanied by an appropriation of an equal average amount of money to each mile of said road, west of the portion thereof already ceded to the States in which it lies, to that expended upon each mile relinquished, to be paid in three annual installments, one of which shall be due upon the passage of the law.

In closing, Representative Ewing said, "The amendment to his instructions which has been read, I shall insist upon hereafter, unless his motion be, as I hope it will be, in the meantime withdrawn."

The House adjourned without acting on the bill, the amendment, or the amendment to the amendment.

On April 12, the House picked up where it ended the day before with consideration of the bill, the Underwood Amendment, and the Ewing Amendment to the amendment.

Kentucky Representative Pope took to the floor. He had been elected to the United States Senate as a Democratic Republican and served from 1807 to 1813. After leaving office, he had served in the State legislature, as Territorial Governor of Arkansas (1829-1835), and in private law practice before being elected to the House as a Whig in 1836.

He said the assault on the bill by his Kentucky colleague, Representative Underwood, "was indeed unexpected, especially at this stage of the proceeding. I was the more surprised that the opposition should come from one of those who had so long rallied under the banner of the great champion of the American System, to whom a monument has been erected on this great National road."

He had taken the seat on the Committee of Ways and Means only after consulting with his Kentucky colleagues because "I was desirous to act in harmony about the propriety and policy of participating in the labors of that committee." He differed in one respect:

I never was, since I fully explored the subject, in favor of a general diffusive system of internal improvements, such as the States were fully competent to make without the aid or agency of the National Government. Improvements of local character should be left to the local Governments; and those only of a decided national character, as declared by President Jackson, are within the legitimate

action of this Government. Neither time nor circumstance have changed my views on this and other subjects of primary importance.

Representative Pope, who had been born in 1770, had a unique perspective on the road that most of his colleagues could not share:

This Cumberland road was commenced near the Potomac river nearly thirty years ago, when I was a member of the other House. I was for that road then, as necessary and proper, and a work of great national utility in a political, commercial, and social view. When I first crossed, in the fall of 1807, the immense body of mountains between the Potomac and the Ohio, and cast my eyes from their lofty summits to the extensive region of the West, and turned them to the States bordering on the Atlantic, I was deeply impressed with the thought that this mountain barrier had been placed there for the mutual defence and security of independent nations; and that, to bind together the people of the East and West, by whose joint counsels and arms liberty and independence had been achieved, it was necessary to cut down this great wall of separation.

I could not believe that the old devious and miserable road made by Braddock and Washington, about the middle of the last century, was to remain the only medium of intercourse between the Eastern and Western waters. Pennsylvania had no interest then, nor has she now any special interest in this road. Her local views and policy led her to improvements in a different direction. The plan of making this great road from the Potomac to the Ohio had its origin with the first statesmen of Virginia; and the foundation was laid under the administration of Mr. Jefferson.

At the threshold, Mr. Speaker, permit me to say that this road does not rest on the general power or policy of making internal improvements, but is based on solemn compacts with Ohio, Indiana, Illinois, and Missouri, and the strongest implied pledges of this Government to those States to make this great National road to the Mississippi river, for which this bill now under consideration makes an appropriation.

The superintendents or engineers employed on this road, through the States of Ohio, Indiana, and Illinois, made an estimate of more than one million of dollars for the present year; but the committee, considering the present condition of the Treasury, concurred with the Secretary of War in believing this sum ought to be reduced to \$450,000, which he thought sufficient to keep the work in progress during the present year, and prevent the loss of materials which had been collected and prepared for bridges, and injury to those parts of the road which had been graded in the three States. To me, sir, was assigned the duty of reporting this bill, and to attend to its progress in the House.

It was referred to a Committee of the Whole, where it was expected to be assailed if opposition was to be encountered. It passed through the Committee of the Whole, and was reported to the House with very little or no opposition, and, when the question was about to be put on its engrossment, an unexpected assault was

made on it by one of my colleagues [Mr. Underwood,] from whom I least expected such a course. I certainly expected the cordial cooperation of the representative from Kentucky.

Regarding the objection that a general system of internal improvement was not to be undertaken, "I can only say that I cannot anticipate what Congress will do, but must be regulated in my support of this bill by the past action of the Government":

I certainly did not, Mr. Speaker, expect to be called on to explore this whole subject for the last thirty or forty years, during which this Government has been making appropriations almost every year for this great national work. My colleague lays much stress on the amount this road has cost. I have not made an estimate of the amount, but presume it is large. It is proper to observe, however, that a large portion of the sum has been expended between the Potomac and Ohio rivers, before you enter the territory of any of the States mentioned in the bill, and we should bear in mind that this road was commenced before road-making was well understood, and that the first experiment of paving the road between this [point] and Wheeling in a great measure failed, and a large amount was expended in repairing it and re-making it on the Macadamized plan. On this branch of the subject I do not intend to dwell.

It is urged, also, that the condition of our Territory [sic - Treasury] forbids this appropriation. To this I might answer that it has not prevented other appropriations. We granted \$100,000 to the heirs of Robert Fulton, about \$75,000 more than was ever claimed before either by Mr. Fulton or his representatives. We have appropriated probably a million of dollars or more to send out an exploring expedition to distant seas, which had been authorized by Congress two years ago. Why did not the poverty of our Treasury arrest these appropriations?

He had taken concerns about the Treasury into account "in making the appropriation less than half the amount desired by the representatives from the States more directly interested."

In his view, if Congress abandoned the road, "it will never be finished by the States. Their local interests will prompt them to expend their funds for different improvements." They considered the Cumberland Road a national work, "and nothing tends more to lessen the confidence in and respect for the Government than an unstable, whimsical and fickle course."

He also addressed the concern that the general government had not given Kentucky the funds it should have received. He did not consider this a valid argument. "Shall we, because we have not obtained what we desired, violate the solemn compacts and implied pledges of our Government, to the injury of our neighbors and the whole West?" He answered his question:

Certainly not. I cannot, I confess, perceive the force of this objection. Will it be seriously contended that we ought to wrong our friends and neighbors, and the whole West, because this Government has done us wrong?

. . . Kentucky is identified, in interest and policy, with this whole West. If making this road directly benefits our neighbors, it must indirectly benefit Kentucky. If it will tend to enrich and populate the Western territory, no western man, it would seem to me, ought to oppose its progress

This Government has, in numerous instances, expended money in making roads through her Western lands to promote their sale and settlement, to which no Western statesman has heretofore objected; and of her power to do so no person, the most strict constructionist, has ever doubted. Mr. Speaker, (said Mr. P.) I have said that this Government ought to prosecute this work, in compliance with her solemn compact and implied faith; and I hope to make this apparent by a retrospect of the several continued acts of this Government for nearly thirty-five years.

He began with the Enabling Act of 1802 for Ohio statehood and summarized each subsequent act, including the Act of March 2, 1831, that surrendered as much of the road as was completed to the State of Ohio to operate as a toll road, as well as later sections when they were completed. This law accepted the terms and conditions of the State law of February 4, 1831, accepting ownership of the road. Clearly, the State and Federal laws required the general Government to complete the road before Ohio would take it over:

It was never expected, nor was it in the contemplation of the parties, that the States were to make the road, but both parties clearly understood that the road was to be made by the United States. The States have faithfully fulfilled the terms of their contracts; they have paid, and are paying, five years' tax on the lands sold by this Government, which would otherwise have gone into State Treasuries

Arrangements have been made by this Government with Maryland, Pennsylvania, and Virginia, for keeping this road in repair between the Potomac and the Ohio, similar to that made with Ohio; and there is an appropriation of nine thousand dollars in this bill for completing the road in Pennsylvania, pursuant to the terms agreed on. There is now paid by the United States for carrying the mails on artificial roads, to companies and States, probably several millions of dollars; for, although first paid by contractors, it is indirectly drawn from the pockets of the people.

After concluding his survey of the road's history, he said:

Mr. Speaker, [said Mr. Pope,] steamboats and railroads answer very well for many purposes; and railroads are useful for short distances, and between cities not very distant from each other, where there is great and constant commercial intercourse; but they are not suited to the agricultural people of the interior as well

as Macadamized roads, on which every person can travel on feet, on his pony, in cart, wagon, dearborn or carriage, as fast or as slow as suits his inclination or convenience. I like a road on which every one can carry his own productions to market. I take little pleasure in being whizzed through the country with the speed of a humming bird without time ever to get a drink of water on the way. Indeed, I think our public men would do better and earn more of the good sense and public opinion of the people, if they would travel a little more through the interior in less haste, and hold converse with the plain, industrious, and farming classes of the nation, who are, at last the salt of the earth and the substratum of our Republican system.

The goal of the Underwood Amendment, he said, was to cede the road to the States. “These States would not thank us for the cession: Indiana and Illinois certainly would not, as there is little, if any, part of the [road] done in either of those States; Ohio might be willing to accept a cession, provided we would repeal the act of 1831, by which she agreed to make the tolls low and the road free to the United States.” Ohio could then impose a high toll on the United States mail and every citizen “and derive a considerable revenue from the tolls on the road finished in that State.”

Representative Pope thought that a fair option would be for Representative Underwood to withdraw his amendment and simply vote against the bill. If Congress was not going to meet its obligation to the people to finish the Cumberland Road, “I hope the question will be openly and fairly met. Let us go on with the road or abandon it.”

He did not want to get into the issue of preemption that Representative Campbell had alluded to. On the proper occasion, he would rise to vindicate “that class of settlers on the public domain from injustice, and to place their claims on the liberality of Congress fairly before the House.” For now, he could not “admit the propriety of introducing the tariff into this debate by the same gentleman from South Carolina.” That subject was settled in 1833. For now, it was premature to base congressional action on speculation in 1838 about what might happen after expiration of the 1833 Act in 1842:

In conclusion, Mr. Pope beseeched gentlemen not to recommit the bill, but to meet the questions on the engrossment and passage of the bill by open and direct vote.

Representatives Hopkins Holsey of Georgia and John Robinson of Virginia supported the motion to recommit, but their comments were not reported in the *Globe*.

Representative Charles G. Atherton, a Democrat from New Hampshire, also expressed his opposition to the bill. As a member of the Committee of Ways and Means, he wanted to clear up any misunderstanding as a result of Representative Pope’s remarks. The implication that a majority of members of the committee approved of the bill was false. Representative Atherton’s impression was that a majority “were not favorably disposed to the bill, and that they had merely suffered it to be reported because it referred to a subject in which many members of the House felt much interest, and which was proper for the consideration and decision of the House, and which they would hardly expect the

committee to retain from them, or to reject.” That, at least, was his view when he voted in committee to report a bill that he “decidedly opposed.”

In his view, the system of internal improvement by the General Government was “intimately connected with a high protecting tariff,” both part of the Whig’s American System. If such a system were undertaken, he asked, “what limit can be fixed to the expenditures to be made in pursuance of it? – what limit to the revenue to be raised for the purpose of being wastefully lavished in those expenditures?”

Despite “the ingenuity and ability” put into previous speeches, he had yet to hear any “arguments to show that the system which the bill proposed to continue was either just and expedient, or constitutional.” Instead, the primary argument in support of the bill was that “the Government is bound by the obligation of a contract to do this, and that not to do it would be a breach of faith.” When he heard men of proven ability, such as Representative Pope, support the bill based on “an argument utterly and entirely destitute of any foundation – an argument which had long since been abandoned by the leading advocates of the measure, he was induced, at once, to conclude that reasons, with them, were not as ‘plenty as blackberries,’ and that the measure was, by this very circumstance, rendered liable to just suspicion.”

Referring to but not naming Whig leader Henry Clay, Representative Atherton said the founder of this system of internal improvements and the most distinguished advocate for what he called the American System, “has, long ago, dismissed this argument as unjustifiable and untenable. He had abandoned this position. He has rebuked and repudiated this pretence as having no foundation.” Representative Atherton, to prove his point, quoted from the Senate debate in 1835 on a similar bill for continuation of the Cumberland Road in the western States. Senator Clay had said:

Now he did not concur with the gentleman [Mr. Ewing] that Ohio could, as a matter of strict right, demand of the Government to keep this road in repair, and why so? Because, by the terms of the compact under the operation of which the road was made, there was a restricted and refined fund set apart, in order to accomplish that object; and THAT FUND MEASURED THE OBLIGATION OF THE GOVERNMENT. It had been, however, LONG SINCE EXHAUSTED. There was NO OBLIGATION then on the part of the Government to keep the road in repair. [Emphasis in original.]

If the chief proponent of a system of internal improvement had declared the chief argument untenable, “the friends of the system must be hard pressed for arguments.”

He congratulated Representative Underwood, formerly a friend of such a system, for coming out “frankly and openly against its continuance”:

The gentleman from Kentucky acknowledges that he has become convinced that the system is partial in its operation, and properly says that he wishes to treat all sections alike; and if any system is to be adopted, he calls for a system of equal justice. Sir, these arguments have again and again been urged against the

adoption and the continuance of this system, and he was happy to know that some of those formerly its friends, have become convinced of their truth.

Why, Representative Atherton asked, should “this system of inequality, partiality, and injustice, be continued?” He went on:

Are we about to lavish hundreds of thousands on this unjust and unequal system, because our Treasury is full to overflowing? No, sir. The time has passed when those in favor of a strict construction of the Constitution need strain a point for the purpose of getting rid of an accumulating revenue, which they fear may lead to the dangerous principle of distribution. The *present* is the time for stopping this vast and wasteful expenditure on this unjust system. If any excuse were needed for such a determination, the present situation of the country would fully afford it. Not only so; it demands so imperatively such a result as to leave no excuse for a contrary determination.

Rejection of the bill would, as its advocates claimed, rob the States through which the Cumberland Road passed, “but he did think that to pass the bill would approach much nearer to such a consummation.” The bill proposed “to ‘rob’ one section of the Union for the benefit of another.”

Representative Atherton also rejected another common argument, namely that the Cumberland Road was the best way to cement the Union. The best way, he said, was “for the General Government to keep itself within its constitutional sphere, and not to exercise powers which did not belong to it, in pursuing a partial and oppressive system, the effect, if not the object of which is to build one section of the Union at the expense of another.” He considered the proposed system as “not only oppressive and partial, but as unconstitutional also.”

Because of its injustice and unequal operation, Representative Atherton was convinced that “the wise men who framed the Constitution, never intended to confer such a power on the Federal Government, unless, indeed, the clause of the Constitution can be pointed out, which explicitly and unequivocally confers it.” He wished that all those who spoke in support of the bill by naming those “who have sustained or have seemed to sustain this system” had instead “pointed to the clause in the Constitution where the power is conferred”:

It can surely do no harm to go to the Constitution itself; for “a frequent recurrence to fundamental principles,” is necessary as a safeguard to our liberties, and to prevent the Constitution itself from being overwhelmed by glosses and constructions, and the opinions of those who not only were not its framers, but who have no sentiments in common with those distinguished patriots.

(Virginia’s George Mason included the phrase “a frequent recurrence to fundamental principles” in Virginia’s Declaration of Rights, ratified on June 12, 1776. Mason was an active and influential member of the Constitutional Convention, but he refused to sign the document because it lacked a Bill of Rights.)

Representative Atherton said the consequences, if the general government possessed such power, “go very far to show how cautious we should be about hastily admitting its existence.” To demonstrate this point, he referred to President Monroe, who was often cited as one of the Presidents who signed appropriation bills for the Cumberland Road:

Mr. A. believed it was in 1822 that Mr. Monroe returned with his veto a bill, establishing toll-houses and toll-gates on the Cumberland road, on the principle, that if Congress possess the power to enter a State, interfere in their domestic concerns, to erect toll-gates upon their roads, to establish a system of police over them, and inflict penalties for its violations, and create tribunals, before which such offenses might be tried, every barrier between Federal and State authority would at once be prostrated; and so far as entire jurisdiction over the post roads of the country, for the purpose of levying tolls to keep them in repair, could extend, that this principle would lead to perfect consolidation.

Yet the distinguished Senator from Kentucky, to whom he had alluded, contended, certainly with great plausibility, that the *power to make the road admitted*, the rest all followed as incidental to it, and as a necessary consequence. And he [Mr. A.] would again say, that it would give him great pleasure if the advocates of this power would point out that particular clause in the Constitution, from whence they deduce it.

The legislature of his home State, New Hampshire, had long opposed the concept of a general system of internal improvement by the general government:

They have ever been uniform in this opinion. They feel and know its injustice and inequality and oppressiveness. They have made their own roads, unaided by the General Government; they are willing to do it. Why, then, shall they be taxed to make roads in the flourishing, fertile, and rich States of the West? Sir, it is monstrous and wicked injustice.

He stressed that this belief of the State legislators did not reflect hostile feeling towards the western States. “Far from this. No longer ago than the last year they instructed their Senators, and requested their Representatives, in Congress to use their exertions to procure ‘such graduation of the prices and limitation of the sales of the public lands as will best promote the settlement and actual occupancy of the same’”:

They are actuated by the strongest feelings of attachment towards the inhabitants of the Western States, who, on account of the continued stream of emigration which has poured thitherward from New England, may literally be called their brethren. But justice to themselves requires that they should protest against any further continuance of this system, so fraught with evil and injustice.

Following statements by Representatives Mercer of Virginia and Patrick G. Goode of Ohio, both members of the Whig party, in support of the bill (not reported in the *Globe*), the House adjourned without acting on the measures.

The House returned to the subject on April 18, with the initial question being “on concurring with the Committee of the Whole on the amendment making an appropriation for guard fences east of the Ohio, and the improvement of the Laurel Hill descent,” as well as Representative Underwood’s motion to recommit the bill with instructions to report a bill calling for the road to be turned over to the States through which it passed.

Representative Underwood indicated he wanted to postpone the bill “on the ground of getting a response to a call for certain information respecting it.” Ohio Representative Mason opposed the delay “as an indirect mode of killing the bill,” adding, “There could be nothing wanting in the way of information.” When Representative Underwood said he was seeking information on cost-per-mile, Representative Mason replied that “the gentleman . . . would find that information in a document printed at the first session of the last Congress.”

After some parliamentary maneuvering, the House voted, 96 to 99, to reject engrossment of the bill.

Representative Everett moved reconsideration of the vote, leading to a call for the full House, with 203 members responding. The House then considered a motion to lay the motion to reconsider the previous vote on the table. By a vote of 85 to 112, the House rejected the motion, but voted 110 to 87 to reconsider the bill.

Representative McKennan moved the previous question on engrossment of the bill, but the House refused to second the motion, 70 to 79.

With the parliamentary moves out of the way, several Representatives addressed the House, starting with Representative Charles E. Haynes of Georgia. He opposed the bill, citing initially the “bankrupt condition of the Treasury”:

We have heard repeatedly of the extravagance and profusion of the late and present Administrations, of the pledge of their supporters to bring back the Government to an economical expenditure; and on no occasion, since the commencement of the present session, has so fair an opportunity been offered of acting out the professions of both sides of the House than is furnished by the bill under consideration. For his part he should place little reliance upon professions of retrenchment and economy, let them come from what quarter they may, so long as gentlemen continue to vote for appropriations which the public exigencies may not require. We have heard much declamation against profusion and extravagance in the gross, but unfortunately, when brought to the details of appropriation and expenditure, every item is earnestly and energetically supported.

He blamed the budget problem on “redundant revenue,” that is “the policy of piling one increase of duty upon another by your tariff acts from 1816 to 1828.” This resulted in increased revenue, but he said that it “may be stated as a general principle, both in public and private affairs, that revenue and expenditure will be proportioned to each other.” When revenue creates a surplus, expenditures should be increased “if proper and legal

objects can be found upon which to make such expenditures.” The government had “no legitimate power” to hoard surplus revenue or waste it “upon any system of corruption or favoritism whatever”:

The dictate of a wise and considerate economy would require that we confine ourselves to such appropriations as are indispensable to the public service, and go no further. Surely the continuation of the Cumberland road is not embraced in the class of objects to which he had adverted.

He pointed out that under the Deposit-Distribution Act of 1836, about \$28 million of public money had been deposited in State-chartered banks around the country:

At the extra session in September last, indulgence was given to the deposite banks and importing merchants for tea or twelve millions more. But this was not all. When the Bank of the United States, the great regulator, ceased to have a legal existence in 1836, it was unable to refund the six or seven millions of stock owned in it by the Government. Thus has an aggregate amount of public money been placed beyond our reach, but little short of fifty millions of dollars; and now, forsooth, because it has become necessary to borrow money, or employ the credit of the Government by the issue of ten millions of Treasury notes, we are met with the cry of “A bankrupt Treasury!”

In addition to those funds, he mentioned that “we must not forget our obligation under an act passed at the late extra session of Congress, to deposite nine millions of dollars more with the States on the first day of January next.” He concluded:

Sir, the amount still due from the late deposite banks, and the Bank of the United States, exceeds the whole amount of Treasury notes, issued by authority of the act of October last. In the distribution of public money by the deposite act of June 1836, about three millions three hundred thousand dollars have been received by the States of Ohio, Indiana, and Illinois, the States interested in the passage of the bill under consideration. But this is not all the public money in possession of those States and the deposite banks situated within them. The deposite banks in Ohio, Indiana, and Illinois, yet retain, under the act of October last, granting indulgences to the public depositories, more than eight hundred thousand dollars of the public money, making in all a total of more than four millions of dollars. Under this state of things, borrowing money to defray the necessary expenses of the Government, more than four millions of the public money in possession of the States, and deposite banks of Ohio, Indiana, and Illinois, is there any one who has pledged himself to an economical expenditure, who can permit himself to vote for the bill?

Several other Representatives spoke in opposition to the bill, including Representative Underwood. He said he had not introduced his amendment because he doubted the general government’s authority to build roads, without State consent, under the Constitution. His objection was that the authority should not be exercised in only a few

States; all should benefit from it. He granted some exceptions for works of great advantage to the country as a whole, such as the contemplated ship canal around Niagara Falls and extension of the Chesapeake and Ohio Canal to Pittsburgh. "While, therefore, (said Mr. U.) I reserve the right to make exceptions, I am ready now to declare ceaseless hostility to all further appropriations for works which, being destitute of great national importance, are chiefly beneficial to the States in which they are located." He would continue his war "until favoritism and partiality receive their death blow, or justice is compelled to retreat before political intrigues, to give up the unavailing contest, and to seek a melancholy safety in obscurity and retirement."

The extension of the Cumberland Road through Ohio, Indiana, and Illinois "presents, to my mind, no objects of transcendental importance which should give it the preference over all other roads in the country, and make it a national bantling to be taken to our bosoms, and nourished from the general Treasury, while we treat with cold indifference and neglect the roads of Tennessee, Kentucky, and other States." It will never be used extensively for military operations, given that river transportation would be far more efficient. Moreover, the rivers, lakes and canals were "the great national avenues of commerce." He added:

The road, in a national point of view, will be valuable mostly on account of its facilitating and cheapening the transportation of the mails. But in that respect there are hundreds of other roads in the United States having at least equal claims to the attention of Congress The contemplated railroads from Boston to the Hudson, from New York City to Lake Erie, from Baltimore to the Ohio, from Charleston to Cincinnati, from New Orleans to Nashville, do, in my opinion, far transcend in importance the extension of the Cumberland road; and yet we hear not a whisper in behalf of the appropriations to these, while, year after year, a deafening clamor is raised of, Give, give, give, to the latter.

He said he did not hesitate to compare the Cumberland Road and its extension to Alton or St. Louis to the Maysville Road and its extension through Kentucky to Nashville. Although Congress thought highly enough of the Maysville Road to appropriate funds for it, a "chilling veto arrested the Maysville road appropriation, and struck down all hope of executing any general system; and, from that time to this, immense sums have been appropriated for internal improvements, not with the view to execute any general plan, but under a partial, contracted, unintelligible system, the creature of Executive dictation and misrule, by which thousands upon thousands have been lavished upon rivers and roads in some parts of the country, and not a dollar allowed to other rivers and roads equally deserving in every respect."

Recalling the plan Secretary of War Calhoun submitted after the War of 1812, he called it a "magnificent scheme, broad enough to comprehend all the States." It held out the prospect of funding to aid the States "in the construction of those works most deeply interesting to them":

But, sir, the arm of the late President was put forth, and the system upon which the people had placed their hearts, and their fondly cherished expectations, were

prostrated by this power. Instead of indignant resistance to his mandates, the interests of party and the selfishness of politicians brought about a tame submission to his will; and men might be pointed at who *glorified* General Jackson for the appropriation to the Maysville road, before the veto; and who, as soon as the veto was promulgated, faced to the right about, and *glorified* louder and longer than ever! The general system by these means was destroyed. It is now defunct.

In its place we have a partial and unintelligible system, if system it can be called, dependant upon the existence or nonexistence of ports of entry, and other considerations equally learned and wise; executed greatly to the benefit of the people and politicians of some sections, while those of other quarters are left to comfort themselves by reflecting how much Nature has blessed them, as the best set-off to the stepdame policy of the Government. Kentucky has felt all this deeply.

Therefore, he was in favor of abandoning the partial system “altogether.” He cited reasons why the general system could not be resurrected:

The States, many of them at least, perceiving, after the elevation of General Jackson to the Presidency, and his veto of the Maysville road appropriation, that the execution of a general system of internal improvement by this Government could not be expected as soon as desired, if ever, adopted systems for themselves, and commenced their execution with such means as they could command. The plans of the States now occupy the grounds which the General Government might and ought to have occupied before the States were forced to take up the business, by your neglect.

If the general government resumed work on a national system, it would interfere with and mar the States’ plans:

Under this condition of things, the only sensible course, it seems to me, which we ought now to take is, to aid the States in the completion of their plans and works It is the first duty of every statesman, having the superintendence of any part of our complex political system, to be extremely careful in preserving and maintaining the harmonious action of the whole. It is better to abstain from doing that which you may rightfully do, and which, when done, would be productive of good, than to force your measures upon an unwilling, dissatisfied people. For one, I cannot consent, strongly attached as I have been to a general system of internal improvement, and its execution by the nation, to commence operations at this late period which shall, in the least, interfere with those of the States.

Legislative wisdom would blend public and private interests, as Kentucky had done “by uniting with her citizens in making roads, while she has reserved to herself, exclusively, the more important work of improving her rivers”:

And we have the natural fruits of such a policy in the vast expenditure, the waste of money upon the Cumberland road. I have taken some pains to look into this matter. I find that Captain Ogden, the superintendent, reported to the last Congress, that \$570,363.61 had been expended on one hundred and forty-eight miles of the road in Indiana, and that it would require \$1,779,266.53 to complete these one hundred and forty-eight miles. It thus appears that each mile will cost a fraction more than \$15,675. The same officer reports upon ninety miles of the road in Illinois, showing that \$277,591.83 had been expended, and that \$939,407.30 would be required to finish, so that these ninety miles will cost upwards of \$19,300 per mile. I have not put myself to the trouble of searching documents to prove the cost, per mile, of that part of the road which passes through the mountains. But, judging from the expenditure in Indiana and Illinois, where the labor in grading is inconsiderable, the expense per mile, across the mountains, exceeds \$20,000. Does any member believe that the road would have cost as much if individual interests had been combined with those of the Government?

He stated that much of the problem stemmed from President Jackson:

The great lever by which he uprooted the foundations of the settled institutions of the country, wisely and beneficently conducted by his predecessors consisted of the increase and unscrupulous exercise of the patronage which appertained to his station. To accomplish his purpose, and to bend every thing to his will, he did not hesitate to make vacancies by his power of removal from office, and then to fill them by those who made his dictation, instead of the laws of the land, their rule of action.

Alarmed at these high handed proceedings, the Whig flag of the Revolution was raised, and the friends of Liberty invited to rally around it. I obeyed the summons. From the hour I volunteered, to this moment, I have, on all suitable occasions, pointed to the enormous power and patronage of the Executive as the fortification of an enemy, which must be levelled. It is the despot's strong hold, the world over.

Now, sir, with these opinions firmly fixed, I surrender, without regret, the general system of internal improvement, because it takes from the National Executive one of his sources of patronage. We shall have fewer Government agents controlling and spending their hundreds of thousands, fewer jobs to let, and less ability to reward partisans with political "spoils." If I have not been misinformed, your Government agents and contractors on the Cumberland road have attempted, and succeeded in exercising, a political influence over the laborers in their employment. It has been an object as dear to their hearts to carry an election, as to construct a road; and they have so managed it as to connect the road with politics, and politics will filling their pockets, in a manner equally degrading and corrupt.

As a result, abandoning the idea of the general government building roads will not result in bad roads. “The States are now able to make roads and canals for themselves.”

Some of his colleagues said they had been surprised by his position, but if they had checked the journals of the previous Congress they would have found that he was entirely consistent. He had voted against the exploring expedition, funds for the Fulton heirs, and “the grant of \$350,000 to the Cumberland road in the present exhausted condition of the Treasury”:

In setting on foot the Exploring Expedition, the conduct of Congress resembled that of a young spendthrift, who wasted his estate, rambling abroad in pursuit of pleasures and fancied good, to the neglect of his more important and more profitable business at home; and as to the Fulton appropriation, it was in my judgment a donation, which Congress refused to call by its proper name, and passed it through under the delusive idea of settling a debt.

He also addressed the “important argument” against his proposition, namely the compact with the States to build the road to the Mississippi River. “Gentlemen have asserted this with as much seriousness as if it was founded in truth; and were it not that the gravity of their countenances rather forbids it, one might be disposed to smile at their errors and credulity on this point.” He would instantly withdraw his motion if it could be shown that it violates any compact or pledged faith. He cited the enabling acts for Ohio, Indiana, and Illinois, with their restriction of public lands revenue for roads to and through the States:

The foregoing acts of Congress constitute the basis upon which the obligation of continuing the Cumberland road to the Mississippi must rest, if there be any

It is perfectly clear, from the foregoing acts, that there was not the shadow of an obligation imposed upon Congress to make a road in either of the three States. I admit, however, there was an obligation imposed to make a road, or roads, leading to each of said States, so far as the two per cent. fund would accomplish it. In the case of Ohio, the stipulation is to connect the Atlantic and Western waters; but no such provision is made in relation to Indiana and Illinois. It would be a compliance with the contract to construct roads leading to their borders from Michigan and Missouri, or any other quarter. Congress has, however, undertaken to fulfil its obligation by making the Cumberland road, and thus not only to fulfil it to the letter, by making roads leading to these States, but to give each a greater advantage by likewise making the road in their respective territories. Of this I will not complain, although three per cent. has been allowed two of these States to make roads within their limits whenever they pleased.

He referred to the Act of March 25, 1806, signed by President Jefferson, for laying out and making the road:

This was the commencement of satisfying the obligation to Ohio, and, in this act of 1806, a provision, making the sum appropriated “chargeable upon, and

reimbursable at, the Treasury, by said fund of two per cent. as the same shall accrue.”

Then came the Act of May 15, 1820, for laying out and continuing the Cumberland Road to the Mississippi River:

But, as if endowed with the spirit of prophecy, and foreseeing the unfounded pretensions that might be set up, of a “moral and legal obligation” to complete the road after having laid it out and begun it, and intending beforehand to denounce any such claim upon the Government, the Congress of 1820 inserted in the second section of their act the following proviso: “Provided always, and it is hereby enacted and declared, that nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to make, or to defray the expense of making, the road hereby authorized to be laid out, or of any part thereof.”

With the road laid out, Congress passed the Act of March 3, 1825, providing for a superintendent to oversee the work, including a survey and laying out of the road to Missouri’s State capital. The Act appropriated \$150,000 from the general Treasury to begin the work. “But the act expressly declares that the money shall be ‘replaced out of the fund reserved for laying out and making roads under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on an equal footing with the original States.’”

Representative Underwood continued:

It is impossible for the unbiased mind to read the foregoing acts of Congress without clearly perceiving that the extent of obligation imposed by them requires the faithful appropriation and expenditure of the two per cent. fund in making roads leading to the States mentioned, and nothing more. Now, if it can be shown that we have done that, the obligation is discharged. If we have expended more, the excess is a gratuity.

With that thought in mind, he had information from the Secretary of the Treasury about expenditures on the Cumberland Road. Total combined expenditures thus far equaled \$6,365,083.46, east and west of the Ohio River. He also had information on how much the three States between the Ohio and Mississippi Rivers received from the 3-percent fund for in-State roads as of December 29, 1836: \$1,259,727.28. Based on the collective total of the 3 percent fund, Representative Underwood calculated the size of the two-percent fund for roads leading to the States as “\$839,818.18, which, being deducted from \$6,365,083.46 shows we have, as a gratuity, expended \$5,525,265.28 more than we were bound to.”

He did not, he said, gather these figures to justify any envy on behalf of his State of Kentucky. In fact, he said, he rejoiced because the citizens of those States were his countrymen:

But I am not so blind as not to perceive that Government has more than discharged all its obligations to them and their States; and that, if you could double the quantity of lands yet to be sold in their boundaries, and treble the price, two per cent. on the money arising would never reimburse us the half of the expenditure already made, over and above what any compact required us to expend. Under these circumstances, the people of those States have no just claim to ask from an empty Treasury the additional sum of \$339,000 to go on with the work. My motion to recommit, with instructions, is made in order that the road shall be surrendered to them; and, if hereafter the two percent. fund should ever augment so as to overpay us, which is scarcely a possible event, no one will more cheerfully surrender the surplus than I. Indeed, sir, it may now be provided for, if my motion prevails. In giving up the road so far as it may have been finished, the States should come under the same terms and stipulations in regard to the passage of the mail, troops, munitions of war, &c. as have been heretofore made in relation to that part of the road already finished and ceded to the States. In regard to the parts of the road partially done, I am willing to ask no equivalent in return.

Thus, according to Representative Underwood, the Congress would not violate any compact by adopting his amendment.

He went on to explain that the Cumberland Road “and its extension never constituted a part of any general plan or system of internal improvement; but that it had its origin in compacts with the States to and through which it goes, and the enhancement of the value of the public domain.” The basis for the road, namely the compacts, demonstrated that it was not part of a general system of internal improvements. “On the contrary, by placing this road for support upon the compacts and the proprietary interest of the Government, the argument in favor of a general system is thereby weakened. It is as much as to say, but for these peculiar considerations the road could not have been constitutionally made by us.”

Representative Underwood was “for fulfilling all obligations, not literally, but liberally; and in this instance we have done it, by giving heaping measure.”

Referring to language used by Representative Ewing, Representative Underwood said:

I will only retort . . . by using his own language, and tell him, “that he greatly overstates his sagacity and intellectual strength, if he thinks he can break down the obligations entered into and acted upon for thirty years,” and excite rebellion in the State which has honored him, even if my motion should prevail.

He concluded:

Mr. Speaker, several of my Whig friends who differ with me on the present occasion, have ventured, in the course of their remarks, to express their regret that the proposition I have submitted should come from a Whig. What, sir, regret that a Whig should propose to stay the hand of extravagance; to stop expenditures partial and unjust; to claim common funds as common property, and to insist that

they shall be used for the benefit of all, and not for a few! Sir, I ought to have received the thanks of every true-hearted Whig, rather than the cold expressions which have been bestowed. There is something *wonderful* in the amalgamating influences of this Cumberland road. It operates like magic. The Whigs of Ohio, Indiana, and Illinois walk as lovingly with their political adversaries on this particular question as if they had always, on all questions, been perfectly agreed! How happens it that even where this road touches the territory of the Old Dominion, it makes the representative a good internal improvement man, and seems to silence all constitutional scruples in vowing money for that purpose?

I dare not say, when our constituents are getting money, and we, in consequence, are getting their votes, that all so situated have irresistible motives to support appropriations to continue this road. But I will say, there is a wonderful unanimity of sentiment on this particular matter among the representatives of the States through which the road is to be carried northwest of the Ohio river!

Sir, I will take leave of my Whig friends in these States, and of the subject, by saying to them, go home, tell your constituents that they have had millions more than they were entitled to under any compact; that Congress has given them the road as it is, and asked nothing in return where it is not already finished, and that they, like a favored son of a kind father, who finds it necessary and just to withhold further donations, ought to return blessings for past favors, instead of curses for the change in the father's conduct. You may tell them all this with truth, if my motion prevails, and they will approve what Congress has done, for you represent a sensible, reflecting, and honest people.

On his motion, the House adjourned.

In the end, the House did not adopt Representative Underwood's amendment. Instead, on April 20, the House first approved a motion, 100 to 95, for engrossment of the bill for a third reading. Opponents made multiple votes on motions to adjourn but they were voted in the negative. Attempts to secure agreement on the date of the third reading were unsuccessful. Finally, Representative Henry W. Connor of North Carolina called for a vote on passage of the bill. With that, the House approved the bill, 96 to 80, making appropriations for continuing the Cumberland Road in Ohio, Indiana, and Illinois. The House sent the bill to the Senate, which received it on April 23.

Senator Tipton, on behalf of the Committee on Roads and Canals, reported the House bill to the Senate on April 27, without amendment, and indicated he would call the bill up soon. He did so on May 22, "but after a debate, the motion was lost," according to the *Globe*, which did not detail the discussion.

The following day, however, the Senate took up the House bill. Senator Tipton reminded his colleagues that the Senate had considered a similar bill early in the session, with the sums to be appropriated suggested by the skilled engineers most familiar with the work. However, the bill had been tabled "and a call made on the Engineer Department for an

estimate of the sum required to comply with existing contracts and to preserve the road from dilapidation.”

The reduced estimate had been received and it “differed but little from the sum in the House bill.” Therefore, “seeing the embarrassment of the Treasury, and the delay that would be produced in the passage of the bill through the House, if amended,” the committee decided to introduce the House bill without amendment. He “would not detain the Senate by a speech in favor of the bill” because everyone understood its provisions.

Senator Benton favored the bill, but moved to amend it “by a proviso that the appropriations made should be subject to all the conditions, restrictions, and limitations, as are contained in the act for the continuation of the Cumberland road of the 3d of March, 1837.”

Senator Norvell objected that the amendment was “very artfully drawn” to restore the provision that the funds should be reimbursed from the two-percent fund. “He thought that this was a body which ought not annually to announce to the world that which was a fraud, and wholly untrue, for it was notorious that this two per cent. fund had long ago been exhausted, and that there was not the remotest possibility of any reimbursement out of it.”

Senator Benton acknowledged that the language on reimbursement from the two percent fund had not been in every Cumberland Road appropriation act. In fact, he said, “Bills for this road had been signed by Jefferson, Madison, and Monroe, before any such clause was put in it.” He had voted for bills that did and did not have the clause, but was for retaining it. “The gentleman from Michigan thought there was no chance for reimbursement, but that was a question for time to decide.”

To bring the matter to a direct test, Senator Norvell moved to amend the amendment to exclude the clause for reimbursement.

Senator Thomas Morris of Ohio “doubted the power to make an unconditional appropriation,” and would like to have heard arguments asserting that power. He was fully interested in the Cumberland Road, but “he would sacrifice it rather than not preserve the Constitution in its purity; and the people he represented would also sacrifice everything to the preservation of the spirit of the Constitution”:

The Constitution appeared a dead letter, a nose of wax moulded at pleasure to suit particular interests. He found it suited all appropriations made on the seaboard, but would never reconcile itself to the western border. Did the Alleghany divide the Constitution? Was it to be made applicable on this side and inapplicable on that? He could not understand. If the Senator persisted he would defeat the bill.

Senator Oliver H. Smith of Indiana hoped Senator Benton would withdraw his amendment. Senator Benton had warm feelings for this road, as did Senator Smith, but he would vote against the bill if the amendment or any amendment were approved “as it

was doubtful whether the bill would pass at all during this session, if it had to undergo another ordeal in the other House, where it had been passed by a very close vote.”

If Senator Benton would withdraw his amendment, Senator Norvell said he would withdraw his. “Why, at this late day, were we endeavoring to sent [sic] an example pernicious in itself, and bearing a fraud upon its very face.”

Senator William D. Merrick of Maryland hoped the clause would remain:

The Government ceded this road to the States, and if there was no special contract, there certainly was an understanding that the General Government should first put it in full and complete repair. Mr. M. said he was a member of the Legislature of Maryland at the time, and well recollected the universal understanding; so much so said Mr. M. that good faith ought to induce us to fulfil the pledge.

Senator Merrick had been in the Maryland House of Delegates from 1832 to 1838.

After that, according to the *Globe*, the voting began.

First was a vote on Senator Norvell’s amendment, which was defeated, 12 to 29.

Senator Benton’s amendment was next. The Senate carried the amendment, 27 to 15.

Connecticut Senator Niles objected to the \$9,000 contained in the bill for the Dunlap’s Creek bridge. He thought the road had been ceded to Pennsylvania, which was responsible for keeping it in shape.

Senator Buchanan explained why the appropriation for the bridge was in the bill:

He was himself one of those most anxious to have this road ceded to the States through which it passed, in order to relieve Congress from any further trouble respecting it. The act was passed for this session, and the State of Pennsylvania, by an act passed April, 1825, agreed to receive it. At that time there was an appropriation in the bill for this very bridge. When the commissioners appointed under the act of the State of Pennsylvania accepted this road, there was a distinct understanding by both parties that it was to be completed and the question, therefore, now was, not whether this Government should make the road, but whether it should comply with a solemn contract.

Local officials had built the bridge over Dunlap’s Creek in Brownsville, Pennsylvania, that was incorporated into the Cumberland Road. However, Albert C. Rose, in *Historic American Roads*, reported:

There had been a succession of bridges at this location. One of these was a chain bridge of the type patented by James Finley. This structure suspended partially over the stream and abutting shores, at a height of 25 to 30 feet, collapsed with a

thunderous crash early in the year 1820 because of eight inches of snow exceeding its bearing capacity.

The city replaced it with a wood structure, built in 1825, that was in bad shape by the 1830s. In 1832, the Department of War considered replacing the bridge but decided not to do so. General Gratiot, in a letter on August 14, 1834, to Captain Delafield, explained that the decision was based “on the ground that it was a county bridge, which should be repaired or rebuilt by the county authorities, as the United States, in adopting a system of repairs, had undertaken to repair only that which they had originally constructed.”

On “the other side,” General Gratiot continued, “notwithstanding the United States had not built this bridge, yet, as they had enjoyed the free benefit of it, and as it lay on the tacitly acknowledged line of the road, they were bound, under the act of Congress authorizing the repairs of the road to work on every part of it without reference to original constructors or proprietors.” The question had been discussed with Attorney General Taney, who had decided in favor of replacing the bridge.

The next question was whether to cross Dunlap’s Creek at the same location as the existing bridge or to build a bridge at a new location. The War Department decided that the new bridge should replace the existing bridge at the same location:

It would seem there is no evidence on record that any location was ever finally fixed upon by the commissioners, and reported by them to the President, for the part of the road in the immediate vicinity of this creek; but the fact that the road was actually made in its present location, and used ever since its original construction, without any opposition, is strong proof that this route was adopted by the Government; at all events, in the absence of all other evidence, the department feels constrained to act upon this. Now, the appropriations having been made for the repairs of the road, and not for constructing any part of it, except the new section to turn Wills hill, it is not perceived how any part of the funds can be applied to the new location proposed by you. These views having been submitted to the acting Secretary of War, he concurs in them. Your operations will, therefore, be confined to the old road on which the bridge must be located.

Captain Delafield proceeded to build the country’s first cast-iron bridge. According to Rose, he “conceived the idea of an iron bridge because of the proximity of the foundries at Brownsville.” Delafield oversaw every detail of design and construction while he was in position.

Senator Buchanan explained that the funds in the bill were to supplement the amount already expended for the new bridge as part of the effort to put the road in good repair prior to its transfer to State ownership:

An estimate was made for putting it in repair, and in this estimate was included the sum necessary for the bridge over Dunlap’s creek. The contract was made to build this bridge, and that contract was partially complied with. But it appeared

that the estimate has not held out, because civil engineers were employed instead of military engineers. In addition to that, the commissioners of Pennsylvania were so scrupulous, that they expressly stipulated this bridge should be completed before they agreed to receive the road.

The Senate voted not to adopt the Niles Amendment, with only 11 ayes and the nays not counted.

Senator Henry Hubbard of New Hampshire introduced an amendment to reduce the appropriation for the road in Ohio from \$150,000 to \$100,000, with Senator Tipton in opposition. The amendment was lost, 17 to 23.

The bill as concurred in by the Committee of the Whole was put to the Senate to determine if it would receive a third reading. The Senate agreed, 26 to 17.

The third reading occurred the following day, May 24. The bill passed, 23 to 18.

The Senate transmitted the completed bill to the House.

Later on May 24, Representative Pope moved that the House concur in the bill as revised by the Senate. Several opponents introduced motions to adjourn, but they were “decided in the negative, without a division.” Representative Samuel T. Sawyer of North Carolina moved to refer the bill to the Committee of Ways and Means, “which motion was rejected – ayes 50, noes 80.” Representative Franklin H. Elmore of South Carolina moved to lay the bill on the table; “the yeas and nays . . . were ordered, and were yeas 69, nays 84; so the House refused to lay the bill on the table.” Representative Francis Mallory of Virginia moved to adjourn, “which motion was carried in the negative without a count.” The *Globe* did not report on any discussion that may have occurred on the motions.

Finally, the “House then concurred in the amendment of the Senate,” without a recorded vote.

The next day, May 25, 1838, President Martin Van Buren signed what turned out to be the final main appropriation bill for the Cumberland Road.

For continuation of the road west of the Ohio River, the act appropriated \$150,000 for each of the three States for continuation of the road. The act also appropriated the final funds for the Cumberland Road east of the Ohio River: \$9,000 for completion of the bridge over Dunlap’s Creek in Pennsylvania. The appropriations were “made upon the same terms, and shall be subject to all the provisions, conditions, restrictions, and limitations, touching appropriations for the Cumberland road, contained in the act entitled ‘An act to provide for continuing the construction, and for the repair of certain roads, and for other purposes, during the year eighteen hundred and thirty-seven,’ approved on the third day of March, one thousand eight hundred and thirty-seven.”

As noted, Captain Delafield oversaw construction of the Dunlap’s Creek bridge. In August 1838, however, he was appointed superintendent of the U.S. Military Academy at

West Point. After Captain Delafield left the Cumberland Road, Captain George Dutton assumed supervision of the bridge project, which was completed in October 1839 at a cost under \$40,000.

The Dunlap's Creek bridge, although no longer on the main traveled route, remains in service today on Market Street. In 1978, it was added to the National Register of Historic Places.

In all, according to Searight's compilation of bills, the general government appropriated \$6,824,919.33 for the Cumberland Road. A slightly different total for the Cumberland Road was presented in *A Statement of Appropriations and Expenditures for Public Buildings, Rivers and Harbors, Forts, Arsenals, Armories, and Other Public Works* (from March 4, 1789, to June 30, 1882), compiled by the Department of the Treasury, came up with a different total for the Cumberland Road: \$6,759,257.30.

The Fight for Funds in 1839

When 25th Congress returned for a third session in December 3, 1838, President Martin Van Buren submitted his second annual message on that same day. He did not address internal improvements except to note:

Internal improvement, the fruit of individual enterprise, fostered by the protection of the States, has added new links to the Confederation and fresh rewards to provident industry.

The documents accompanying his message included General Gratiot's report on the activities of the Engineer Department. He discussed the Cumberland Road east of the Ohio River in his summary report on the department's road work:

Cumberland road, east of the Ohio. – The only work remaining to be done upon this part of the Cumberland road is the completion of the cast-iron bridge over Dunlap's creek, at Brownsville, Pennsylvania. The arches, spandrels, and flooring are put together in place, and the whole superstructure will be completed within the month of November. The bridge, it is expected, will be finished in every [sic] part next spring. In consequence of the loss of half the season before the work of completion could be commenced, the small amount of money to be applied, and the consequent want of inducement to workmen, and the difficulty of procuring them under such circumstances, except at the highest wages, it is possible the amount appropriated at the last session may not be sufficient for completion; the additional amount that may be required, however, in any event, be small.

His report included letters from the Cumberland Road Offices covering Ohio, Indiana, and Illinois. Captain Dutton, who had been promoted on July 7, 1838, wrote his annual report on October 29, 1838, from his office in Springfield, Ohio:

Since the 30th September, 1837, the operations on this work have been continued, and the various contracts entered into during that year, were completed and brought to a satisfactory close during the past winter and early part of the spring, when a suspension of further operations was rendered necessary by the exhaustion of the appropriation.

After the Act of May 25, 1838 appropriated \$150,000 for work in Ohio, "the requisite public notices were issued, inviting proposals for the completion of the unfinished part of the road between Columbus and Springfield, being the 18 miles included between the towns of Jefferson and Vienna . . . and for the grading of four miles west of Springfield, across the valleys of Mad river and Bartlett's run, and the adjacent hills, to the 48th mile, requiring much deep cutting and heavy embankments . . . and also for the continuation of the grubbing beyond the Miami and Stillwater rivers." Operations commenced in July, including contracts for the remaining masonry work on the bridges over Mad River and Buck Creek as well as the culverts required to the 48th mile.

In August, Captain Dutton let contracts for building the wooden superstructure of the bridges in the Mad River valley as well as a stone bridge over Bartlett's rocky run. "The wooden superstructures are framed upon the lattice principle, and the lumber is to be the best yellow poplar."

He reported:

The part of the road in Ohio now under the control of the United States, commences at the town of Jefferson, 14 miles west of Columbus, and is 82 miles in length to its termination at the State line.

The twenty-nine miles east of Springfield will shortly be completed, and relinquished to the States, leaving 53 miles which will then be under construction.

. . . It is still believed that the estimate rendered two years since, for the entire completion of the road through this State, will be sufficient for that purpose; but this depends so much upon the amount of the annual appropriations, and the season at which they become available, as to render it uncertain that the ultimate cost will not, in the end, exceed the amount heretofore estimated as necessary

It is proposed for the next year to complete the grubbing and bridging through the State, and to grade the road past the Miami and Stillwater rivers, to the 70th mile, inclusive, west of Columbus

For grubbing 20 miles (\$10,500), wooden bridges and abutments (\$76,600), small arches stone bridges and culverts (\$32,500), grading 23 miles (\$116,000), and contingencies (\$6,400), Dutton estimated he would need an appropriation of \$242,000 in 1839.

Captain Ogden reported on progress in Indiana and Illinois. In the eastern division of Indiana, contracts provided for completion of the road from Richmond east for 2¾ miles, and for preparing the unfinished parts between Richmond and Centreville "for the

reception of the metal. "They are all progressing rapidly, and, with some slight exceptions, quite favorably."

In the middle division, contracts "provided for the entire completion of the mile west, the mile through town, and the mile and a half immediately east of Indianapolis." Contracts for this work had been let on July 2 to Messrs. Williams and Flint. "From the exalted character of this firm as contractors on the Madison and Indianapolis railroad, and from their known and supposed resources, the superintendent felt assured that this part of the road would have been completed," even though the contract was at 16 percent above the engineer's estimate. Despite the high price, Williams and Flint relinquished the contract on September 6, "under the plea that the works were taken too low." Captain Ogden decided that re-letting the contract "would prove injurious." Instead, he decided to use hired labor for the mile west of the city, through the city, and a short distance east. "The work is now progressing, and it is believed that, notwithstanding the lateness of the season, it will be prepared to receive the travel by the first of December."

Contracts on the western division had been let "for the entire completion of about 1¼ mile of the road east of Terre Haute; for bridging Middle Lost and Dewees' creeks, and for grading about half a mile in the vicinity of the former; Middle Lost creek being about five, and Dewees' creek about twenty-five miles east of Terre Haute." These contracts were let at 20 percent above estimate:

The two contracts for bridging have been relinquished, under the plea that the work could not be done for the contract prices; whilst those for metaling east of town are progressing rapidly and favorably, and no doubt is entertained of their final completing according to contract.

A problem had occurred on the 1837 contract for delivery of building stone for the Wabash bridge. After arrangements were made for delivering the stone by water, "the contractor, finding that to procure stone of a suitable quality was more difficult than he had anticipated, abandoned his contract about the first of June":

During the remainder of the boating season, the boat and scows were employed in delivering building and prepared metaling stone to the crossing of the road at Terre Haute. These stone were quarried, prepared, and delivered by day labor.

Lieutenant George L. Welcker, on orders from the Department of War, had inspected the Cumberland Road in Indiana. Captain Dutton included Welcker's September 7 report of the August inspection. It began:

It is believed that more than four-fifths of the grade of the whole line of the road has at one time been considered as finished; but the soil, in many places, being light and porous, the water is absorbed and retained by it, which makes it unfavorable to the construction of a road, and renders it difficult to keep the grade in proper repair. At other points where the road is located on the sides of hills, it is difficult to prevent the water falling upon the hill-sides from flowing upon the road and washing it to pieces. The grade, too, in the earlier construction of the

work, was badly made; it was not raised to a sufficient height above the adjacent ground; the ditches were not made of sufficient width, nor were they so constructed as to carry the water into the natural ravines and channels which would drain it away from the road. From the above causes, the grade, in many places, has been washed and cut to pieces, and is in an almost ruinous condition.

. . . The road at the present time is perfectly dry throughout its whole extent, and, so far as the grade is concerned, may be passed without difficulty; as soon as a rainy season comes on, the ruts and holes remaining in the grade will be filled up with water; and the road, in many places, will become (as it has been) almost impassable

Of the many permanent bridges built during the earlier stages of the work, there are few, indeed, which will not in a short time require to be rebuilt, or to undergo extensive repairs. The same may be said of the old culverts, and of the temporary bridges generally, along the line of the road.

On the eastern division, Welcker found that on the road east of Richmond, grading had been completed, "and nearly the whole distance is now under contract for metaling":

This work is progressing with considerable dispatch; but the manner in which it is executed is not free from objection. The metal is badly broken; and, in preparing the metal bed, the whole of the hard crust was removed from the top of the grade, and the stone was thrown upon it. Should the season continue dry, and should the travel be well regulated upon the first stratum, (which is now laid on,) it is possible that the metal bed will become consolidated, at the same time with the layer of stone which covers it. But if, on the contrary, the season should prove wet, the travel must either be excluded from the road, or managed with extreme caution; otherwise, there is great danger that the metal will be buried and lost.

He had brought his concern about this and other points to the attention of the assistant engineer:

The travel has also been excluded from the grade on the greater portion of the distance between Richmond and Centreville; in consequence of which, the road is unconsolidated, and is in bad condition to stand the travel, and the rains and frosts of winter. Directions were left to admit the travel on this part of the road immediately, and to have it well regulated with barriers, &c.

Work in the middle division was progressing slowly because the contractor employed an insufficient force of workers. "It is true that domestic afflictions have prevented the contractor from devoting his personal attention to the work; and it is also true that the almost unparalleled sickness of the country has rendered it difficult to procure a sufficient force; but it is not believed that all had been done which might have been done." If the contractor did not bring sufficient workers to the job "immediately . . . to prosecute the work with energy, it is respectfully recommended that his contracts be considered as forfeited; and, should such a course be deemed admissible; under existing laws and

regulations, it is further recommended that the work now under contract at Indianapolis be pushed to a speedy completion under the day-labor system.”

He found better conditions on the western division:

On the western division, at Terre Haute, the remaining contracts of 1837 have just been completed; and the contracts of 1838, for metaling east of the town, are progressing favorably, both as regards the time and manner of their execution. The first course of metal has been well broken; it has been partly laid on, on both sections under contract; and the remainder of the course will doubtless be completed in advance of the time specified in the contracts.

Captain Ogden acknowledged that during June, he had found similar conditions as Lieutenant Welcker 2 months later with a few exceptions, mainly due to “heavy and continuous rains.” In addition to the causes Lieutenant Welcker noted, Captain Ogden added “the want of a proper care in protecting the grade that had been finished up to the winter of 1835”:

The greater part of this was finished late in the fall, and was much injured by the winter’s travel; still, it could have been repaired and kept in order at a comparatively small expense, had not the superintendent been restricted in his operations by the act making appropriations for 1836.

It could been put in good traveling order in the spring of 1837, but at the expense of the entire appropriation for the year. The same could be said for 1838:

Such being the case, combined with the difficulty of making disbursement at points remote from the banks, (to whose agency he was indebted for the performance of this duty,) the superintendent determined in the spring of 1837, as a settled policy, to make no expenditures between the points of active operations at Richmond, Indianapolis, and Terre Haute, after completing some unfinished culverts and securing the materials, &c. on the road. He has, however, recently found it necessary to repair some of the permanent and temporary bridges, lest the travel should be turned entirely from the road.

He recommended a sum of \$500,000 for work in 1839.

For Illinois, Captain Ogden reported that all operations during the year had been conducted under the contract system, and had not been entirely suspended at any time since his last annual report. The work consisted mainly of:

Grading – on the eastern and western divisions of the road.
Masonry – quarrying, hauling, cutting and laying stone in bridges and culverts.
Carpentry – getting out and preparing timber, framing superstructures of bridges, &c.

The rainy season, which commenced in the middle of November 1837, had suspended grading, but other branches of the work “were continued with but partial success

throughout the remainder of the fall, and during the following winter and spring.” Work resumed on suspended activities in May 1838 “and have generally been conducted with as much activity, and have been attended with as much success, as the many causes tending to retard and embarrass them would seem to permit”:

The weather continued wet and cold throughout the whole of the spring. In June, from heavy and continued rains, the rivers and small streams became unusually high, the country was partially inundated by water, the sites of many of the bridges and culverts were overflowed, and the works much disturbed and retarded.

In July and August, the swarms of flies which infest the prairies were exceedingly numerous, and rendered the employment of horses and cattle, for the purposes of grading and hauling, almost impracticable. During the months of August and September, and up to the present time, the whole country has been visited by sickness to an unusual and alarming extent, and has rendered it impossible to employ a sufficient force upon the works. Most of the above causes have been more seriously felt upon the western than upon the eastern division of the road.

By the time he received word on June 10 of the appropriation of \$150,000 for Illinois, he had surveys, drawings, estimates, and specifications ready to be let following sufficient notice. The contracts were let at about 20 percent above the engineer’s estimate. “They have, thus far, progressed favorably, and hopes are entertained that the works put under contract this year, as well as those under existing contracts of the previous year, will all be completed according to agreement.”

He summarized the progress:

With the exception of a few miles on the eastern division of the road, the operations have extended from the State line to a distance of about 15 miles west. On this division one mile has been completed and accepted within the year, and several others are nearly finished. Four culverts have been completed, and four others nearly finished. The foundations for the abutments of four bridges have all been secured, and four of the abutments nearly completed.

On the western division of the road the operations have extended from Vandalia (its present termination) to a distance of about 17 miles east. On this division two miles have been completed and accepted within the year, and the grade of five additional miles has been nearly finished. One culvert has been completed, and four others nearly finished. The foundations for the abutments of the Kaskaskia bridge have been secured, one of the abutments has been raised above the lower *askew back*, and the other above high-water mark. The grade of the Kaskaskia bottom has been raised to such a height that the travel may pass over it, at all seasons of the year, with ease and safety. The timber for the superstructure of the Kaskaskia bridge has been delivered, and the framing completed. A great portion of the timber for large bridges in the Kaskaskia bottom has been delivered, and the framing partly done.

Lieutenant Welcker, based in the Cumberland Road Office in Terre Haute, had inspected the road in Illinois. He began his report with an observation:

The country through which the road passes is one which offers little inducement to the agriculturist; but the soil, in general, is one which is admirably adapted to the construction of roads.

The first 25 miles beyond Indiana, “the country is hilly and broken, and is covered by a growth of timber in which the different species of oak largely predominate.” The land was the same in the vicinity of the forks of the Embarras as well as a few miles on either side of the Little Wabash River:

Of the remaining country through which the road passes, by far the greater portion consists of level prairies, many of which are flat, and are liable to become wet and extremely muddy. Such is not, however, the case at present; for as the road is now travelled, a carriage wheel would be soiled by mud, or moistened by water, from Big creek to the Kaskaskia river – a distance of more than eighty miles

The road has been cleared and grubbed throughout its whole extent; but in the hilly and broken sections of country there are several places where (for want of either bridges, culverts, or grading) the travel does not pursue the immediate line of the road, but follows by-ways, which leave the road, and intersect it again at short intervals. These portions of the road, on which there is no travel, have generally grown up with a dense growth of small oak and hickory, varying in height from a few inches to 12 or 15 feet, and which must be removed as the road advances towards its completion In nearly all cases, however, where bridges or culverts have been constructed, the grade has been so far finished as to admit the travel to pass freely over them.

On many such sections, travel had worn the road, which was “cut by heavy and washing rains to such a degree that it is passed with difficulty, if not with danger.”

Where the terrain was level, the road was “nearly as good where no grading has been done as where the grade has been made”:

The whole country is perfectly dry, and in these level districts the whole of the road is firm and smooth.

In most seasons of the year, however, the case is entirely different. The water, falling upon the level ground where no grading has been done, finds no drain or other means of escape, and must remain upon the surface until it passes away by evaporation, or is absorbed by the earth; during the whole of which time the road is exceedingly muddy, and almost impassable. But where the grade has been made, the water is drained into the ditches and flows away; the earth, thrown into the road, raises it above the level of the adjacent ground and water, consolidates readily, and presents a firm surface, over which the travel passes with comparative ease.

Although there are still many tedious and difficult places, yet the road, taken altogether, has never been in better, nor even in as good order as at the present. The mail is transported upon it tri-weekly, in two-horse post-coaches, between this place and Vandalia; and the number of emigrants now travelling upon it is believed to be considerably greater than at any former period.

Contracts on the eastern section of the road from the State line near Marshall to a point about 15 miles west provided for grading, draining, and bridging. "The operations under the contracts on this division of the road have generally progressed favorably and with considerable dispatch." Two contractors for masonry were guilty of departing from contracts and specifications, but measures were taken to ensure compliance, with constructors "subjected to the forfeiture, and the masons to the penalty, provided for in the contracts.

The western division of the road began in Vandalia and extended about 17 miles east. Contracts, one of which had been abandoned, covered grading, draining, and bridging:

Owing to the slight population in the vicinity of the road, and to the general and almost unparalleled sickness of the country, the contractors have not been able to employ a sufficient force; the operations have progressed slowly, but the work has generally been well executed.

One exception was a contractor who "attempted to practice a fraud" while laying the masonry for a culvert. The assistant engineer detected the problem. "The masonry was relaid according to the specifications, and the contractors have already been subjected to the forfeiture provided for in their contract":

The portion of the road on the western division now under contract, is generally level and easily graded; but the country being open and smooth for miles in extent, it is almost impossible to confine the travel upon it; and there is danger that the new grade will not be well consolidated before the commencement of winter.

He completed his report by noting that Congress had not appropriated funds for building the road according to the McAdam system. When current contracts were completed, the road "will be as far completed as authorized by law, from the State line to a distance of fifteen miles west, and from Vandalia to a distance of seventeen miles east.

For 1839, Captain Ogden planned contracts to complete 25 miles of the eastern division, and 13 miles of the western division, for a total estimated cost of \$300,000, subject to appropriation. Speaking of both States, he explained:

Should the appropriations requested for 1839 be granted, they will, together with the parts finished, and those under contract, complete about forty-three miles of the road in Indiana, and about sixty-seven miles in Illinois; and the propriety of making arrangements with these States, by which the road, as finished, may be turned over in ten-mile sections, is respectfully suggested.

The appropriations recommended are such as are deemed essential to the proper progress of the works, and it is hoped that they will be granted without abatement or delay.

Work thus far demonstrated the importance of the Cumberland Road:

The travel upon it, which has heretofore been immense, has been almost doubled within a single season. Emigrants are thronging the road by hundreds, and almost thousands, in a body; and the vast portions of travel and emigration which have heretofore diverged from it, and pursued the different Northwestern routes, are constantly diminishing, and are now following this road, even to the end of its location

With timely and liberal appropriations, contractors of capital and experience could be induced upon the road; laborers and mechanics, seeing a prospect of constant employment, could be brought from a distance; and, instead of uncertain and tardy operations, the work could be pushed forward with regularity and vigor.

. . . If this work is to be finished, the sooner it can be done the better. This is true, whether considered in regard to its public and general utility, to the benefits that will result from its construction to the General Government, to the immense advantages that will flow from it to the immediate country through which it passes, or, finally, whether considered in regard to the cheapness and economy of its construction. [*Message from the President of the United States to the Two House of Congress, Ho. of Reps. Executive, 25th Congress, 3d Session, Doc. No. 2*]

Members of Congress, of course, did not know that the funds appropriated in 1838 would be the final funds for the Cumberland Road (except minor amounts to pay for completed work). Therefore, on December 12, 1838, Senator Tipton of the Committee on Roads and Canals reported a bill making appropriations for the continuation of the Cumberland Road in Ohio, Indiana, and Illinois. Appropriations totaled \$450,000, with \$150,000 (spelled out “one hundred and fifty thousand dollars”) for each of the three States. The bill was read and ordered to a second reading.

When the bill was again considered on January 18, 1839, Senator Henry Hubbard of New Hampshire moved to strike out the word “fifty” wherever it appeared in the bill to reduce the appropriation for each State by \$50,000. After some discussion that the *Globe* did not summarize, the Senate voted 27 to 17 to adopt the motion.

The Senate then approved, 23 to 22, Alabama Senator King’s motion to strike out the enabling clause.

Because several Senators had been absent for the vote, Senator Garret D. Wall of New Jersey, who had voted with the majority, proposed reconsideration to allow those absent to vote. After some debate, pro and con, Senator King moved to lay the motion on the table; he intended to call it up on January 21 when he expected a full Senate to be present. His motion was lost, 23 to 26.

The Senate then voted, without a division, to take up Senator Wall's motion for reconsideration of the vote to take out the enacting clause. The motion on striking out the enacting clause was decided in the negative, 23 to 26.

Mississippi Senator Walker moved to strike out the provision calling for the funds from the Treasury to be repaid from the two-percent fund. The motion lost, 22 to 24.

The bill, as amended, was ordered, 25 to 23, to be engrossed for a third reading. Following the third reading, the Senate approved the bill, 24 to 22, on January 21. The *Globe* referred to discussion about these votes, but did not report the details.

On January 25, 1839, Senator Young from the Committee on Roads and Canals reported the following resolution:

Resolved, That the Secretary of War be instructed to cause an estimate to be made of the sums that will be necessary to complete the construction of the Cumberland road through the States of Ohio, Indiana, and Illinois, to the Mississippi river, and of the additional amount that will be required to extend the same to the city of Jefferson, in the State of Missouri – designating the cost of the same in each State respectively, and the aggregate sum that will be necessary to cover the whole expense – showing, as far as practicable, the separate cost of locating and grading said road in each State, for the construction of bridges, and Macadamizing the same, with the relative amounts that will probably be expended in the original construction of said work, and in making necessary repairs during the progress of the same, and before its completion, for the purpose of enabling the Senate to judge whether it will not be advisable, both as it regards the interest of the United States and the several States more immediately interested in the construction of said road, to make an appropriation sufficient to complete the same, payable in annual installments to the several States respectively within the limits of which the unfinished parts of said road is situate; upon the condition that the said States will agree to accept and apply the money thus appropriated to the objects intended, and thereafter discharge the United States from any further appropriations; and upon the further condition that the said States shall have authority, and it shall be their duty, to keep the same in good repair after its completion, and shall allow the arms and munitions of war of the General Government to pass toll free, and that he report said estimate, when made, at the next session of Congress.

The Senate approved the resolution on January 30.

In the House, Representative Pope of the Committee of Ways and Means reported a bill on January 8, 1839, making appropriations to continue the Cumberland Road in Ohio, Indiana, and Illinois.

Representative Francis W. Pickens of South Carolina asked if a majority of the committee had supported reporting the bill. Representative Pope explained that “a majority of a quorum of the committee” had authorized reporting it. Representative

Pickens moved to recommit the bill to the committee, explaining that his goal was “to call the attention of the House to the dangerous system now coming into practice, of reporting bills to the House with the understanding that they had received the sanction of a majority of the committee, when such was not the case.” He cited several bills that had reached the floor under those circumstances:

It was obvious that such a system was calculated to lead to unsound legislation, as it was well known that the House was greatly influenced on any measure by the fact of the majority of a standing committee having recommended it. It was not this bill in particular to which he objected, but the principle, which applied to all other cases of the same nature.

Representative Ewing said he was surprised by the motion:

It had been stated that the bill had been reported by the direction of a majority of a quorum of the committee; and what could he wish more? If the gentleman had any thing to say against the committee, why did not he arraign them, and not impede the progress of measures of such importance to the country. He would have the gentleman to know that at this session the will of the people, and not that of the Executive, would rule the action of the House. At all events, if he did not learn the lesson at the present session, he would soon learn it.

Representative Pickens emphasized that he was objecting to the principle, not the committee or the bill. And he did not understand the point about the people ruling. “He [Mr. P.] had always been of opinion that it was the people who ruled.”

Representative Mark H. Sibley of New York opposed the motion to recommit. Because several bills from the previous session had been cited, he asked Representative Pickens “to consider the history of those bills”:

He would then find, that although a majority of the committee declared themselves adverse to them, yet they passed the House by a large vote, and also the other branch of Congress. He argued at some length against the policy of making no reports in favor of measures, without the concurrence of a majority, as when the propositions came before the House, independent action could be had thereon, without any reference to what had been done by the committee.

Representative Pickens stated his view that bills must be reported to the House only with majority support in committee. Otherwise, “the House would be in danger of receiving a false impression.”

Representative Cambreleng, a former chairman of the committee (1835-1839), said the “gentleman from South Carolina was partly right and partly wrong.” In some cases, the committee was required to report the bill by law, meaning House rules, even if the majority did not support the bill:

He adduced the bill making appropriation for the support of the Military Academy as an instance. Some of the committee were opposed to the institution, although

they considered themselves bound by law to report the appropriation. But on other occasions, it became the duty of the committee to take into consideration the state of the finances, before they made the appropriations. Mr. C. explained, that recently three members had been absent from the committee, two of whom were sick, but that the committee had been bound by the rule of the House to report the four large bills within thirty days from the commencement of the session. The bills reported that morning, had been reported by the majority of a quorum, but not until after the appropriation had been cut down to the smallest amount.

Representative Millard Fillmore of New York, a future chairman of the committee (1841-1843) and President of the United States, opposed the motion to recommit, saying:

As there was no law for the House to fill the committee after the manner of a jury, it was bound to take the word of a member, when he said that a bill had been reported from the majority of a quorum.

Representative Pope clarified that when the committee considered the Cumberland Road appropriation bill, five members of the committee were present, and the majority voted in favor of reporting the bill to the House.

Representative Pickens said his motion to recommit, with instructions, was based on his understanding that only three members of the committee had been present. Because that was not the case, he would move to recommit the bill without instructions. The House took up the motion and rejected it, then agreed to a motion to refer the bill to a Committee of the Whole.

On January 22, the House took up the Senate bill making appropriations for continuation of the Cumberland Road east of the Ohio River. Representative Walter Coles of Virginia moved to lay the bill on the table. Before a vote could be taken on the motion, the House adjourned. The following day, the House voted in the negative, 77 to 105, on the motion. "So the House," as the *Globe* explained, "refused to lay the bill on the table; and it was committed to a Committee of the Whole."

The Committee of the Whole voted 70 to 55 on February 28 to consider the bill for continuance of the road "through the States of Indiana, Illinois, and Missouri." Representative McKennan moved to amend the bill to appropriate \$20,000 "for the erection of guard fences on that portion of the road lying east of the Ohio, and \$500 for widening a certain turn in the road on the side of Laurel Hill." The committee rejected the motion without a recorded vote.

The House also rejected, 54 to 70, Virginia Representative John Robertson's motion to strike the enacting clause of the bill.

Representative Archibald Yell of Arkansas moved to amend the bill by adding \$65,000 for a road from Memphis to Little Rock. And Representative Franklin H. Elmore of South Carolina moved to strike the clause calling for reimbursement from the two-percent fund. According to the *Globe*:

On this motion a highly animated debate arose, in which Messrs. ELMORE, MASON of Ohio, THOMPSON, THOMAS, DAWSON, ROBERTSON, GARLAND of Louisiana, and HEROD participated; when, at about 10 o'clock, the committee rose (ayes 63, noes 60) and reported progress.

The House adjourned, to return to the Cumberland Road bill on the last day of the Congress, March 3, 1839. On the motion to go into the Committee of the Whole for consideration of the bill, the House voted 74 to 77, against doing so.

The House adjourned without considering the Cumberland Road bill again, thus ending any prospect for continuing appropriations during the 25th Congress.

The 1839 National Road Convention

This failure of Congress to appropriate funds for the project prompted officials in Indiana and Illinois to hold a convention in July to develop a formal appeal to Congress for more funds. On July 8, 1839, delegates met in the Vigo County Courthouse in Terre Haute for the National Road Convention. Every county along the road in Indiana, except Henry County, sent delegates, with 26 delegates from Illinois. Only one county in Ohio, Miami, sent a delegate.

On the second day, the delegates approved a memorial that journalist Mike McCormick summarized in a 2013 newspaper retrospective:

The memorial presented to the convention on the second day traced the history of the road from the passage of the 1802 statute admitting Ohio to the union and describing the compact made by Congress with the State of Indiana on April 10, 1816 and Illinois on April 18, 1818. It concluded:

The Cumberland Road was originally designed as a National Work and, in that light, has been viewed . . . for more than a quarter century. It was completed through the old States east of the Ohio River in reference to its decidedly National character, out of the National Treasury . . . and is destined to confer National benefits upon the Union . . .”

The delegates did not have the benefit of the precise construction estimates for unfinished work . . . Nevertheless, the memorial identified ways Congress could improve and streamline construction, suggesting increases in appropriations early in the Congressional session. [McCormick, Mike, “Historical Perspective: “Cumberland Road Convention in Terre Haute in 1839,” *Tribune-Star*, September 14 (Part I), September 22 (Part II), Part III (September 29), 2013]

Governor David Wallace (1837-1840) forwarded the proceedings of the National Road Convention to the Indiana General Assembly for consideration, observing:

The defeat of the Cumberland road bill in Congress, at the last session, caused great dissatisfaction among the people both of Indiana and Illinois. For the purpose of expressing their chagrin and disappointment at this result, and of

adopting measures in relation to the further prosecution of the road, a convention of delegates from these states and Ohio, assembled at Terre Haute on the eighth and ninth of July. A copy of the proceedings of this body has been furnished me by the president, and most cheerfully comply with the request contained on one of the resolutions, and submit the same to the consideration of the legislature.

The result was the following memorial from the General Assembly to the U.S. House of Representatives, read on January 18, 1840:

To the honorable the House of Representatives

Your memorialists, the General Assembly of the State of Indiana, claim the right as a sovereign State, to call the attention of your honorable body to any object of National concern. That the Cumberland road is of that character would appear without doubt or controversy. It originated in Congress as essential for the national good. It has been sustained through every administration for more than thirty years. It was originally projected as a great western mail route or post road, when not a voice from the west was to be heard in its favor.

When all that fertile region composing Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin and Iowa, was yet a wilderness, yet, such was the importance attached to this great National object, as early as 1802, that the Alleghany mountains, so called was no longer to obstruct the free intercourse with the west. The Cumberland road was commenced in Maryland and completed through Pennsylvania and Virginia to the Ohio river, out of the National Treasury.

Since its location through the western States, the two per cent. fund has been applied as a moiety on their part, and as a member of the confederacy Indiana holds a general interest in this road, and in her sovereign capacity, she claims that interest in behalf of her citizens. That enlightened and liberal policy which has hitherto been extended to the west, has not been without its reward. Many millions have flowed into the National Treasury from the public domain. States have been added to the Union, Territories organized and population extended; while other bright stars are rising in the far west, which will soon add other States to the Union all looking to the Cumberland road as a great National highway to the seat of the National Government.

In full confidence that those just and reasonable views will meet the favorable consideration of your honorable body, your memorialists would respectfully call the attention of Congress to the present dilapidated condition of the Cumberland road, and to urge an early and ample appropriation for its further prosecution and final completion, and in making this request we would be unmindful of our duty to the State and Nation if we did not at the same time, solicit an inquiry into the causes of delay so strikingly manifest in the progress of the work, and to ask of your honorable body an entire reform in the mode and manner of operations. This, your memorialists conceive to be indispensable.

Congress may continue to make appropriations from year to year for an indefinite period, but without a more effectual and less expensive mode of operation, millions may be wasted in paying officers and a numerous train of subalterns, building up towns at favorite points, and enriching individuals, while the road will still remain unfinished, to the great injury of the Nation, the States through which it passes, and to individuals whose property is occupied as places of deposit for materials.

Your memorialists would further suggest the importance of a more efficient and energetic operation of this work on the ground of economy. The sooner it is completed the less it will cost. Each year's unnecessary delay, is not only a loss of the use of the road to all, but the additional expense of keeping up what has been left in an unfinished state the preceding year. That a change, in the management of this work, is necessary will appear manifest, when your honorable body will reflect that the Cumberland road was the first public improvement of the kind in the Union. That it has been in progress of construction for more than thirty years under the war and engineer department. That during its unprecedented slow progress, many thousand miles of roads and canals have been completed under the auspices of the several States.

These facts prove most conclusively that there is a radical defect in the system which requires the wise interposition of Congress to reform. The lively interest which is felt throughout the west upon this important subject, will appear manifest from the proceedings of a Convention held at Terre Haute in July last, a copy of which accompanies this memorial. The completion of this road having been anticipated in the adoption of a general system of internal improvements renders its speedy completion of the first importance to Indiana.

Your memorialists, therefore under all the foregoing considerations respectfully submit their claims in full confidence that they will receive that attention which is due to their merits. [*Journal of the House of Representatives at the Twenty-Fourth Session of the General Assembly of the State of Indiana commenced at Indianapolis, on Monday, the Second Day of December, 1839*]

On February 20, 1840, the General Assembly of Indiana approved a memorial to Congress:

That the failure to obtain an appropriation on the Cumberland road at the last session of Congress has produced great dissatisfaction with a large portion of our industrious and enterprising citizens.

Without stopping to inquire into the cause of the failure of the last winter's appropriation, which so much disappointed our just expectations; and believing that you are aware of the utility and great importance of this national thoroughfare, on which the immense travel and unparalleled emigration from the eastern and middle States to the west are continually passing, and on which the principal mails of four of the western States are daily dependent: and the road,

lamentable to tell, through this State is almost impassable for a part of the year, in consequence of its partially constructed situation: and, what add more to our mortification and regret, in viewing this road in its unfinished condition, is, that a large quantity of rock is hauled to different points, preparatory to Macadamizing, which are now lying useless and getting wasted, for the want of an additional appropriation sufficient to place them on the road in the manner intended; and they would be of immense importance to the travelling community.

There is likewise timber prepared to build bridges substantially, in lieu of those heretofore temporarily built, and which are now going to decay.

Every consideration of economy, and a just regard to the interest of the country through which it passes, require that this road should be graded and metalled, especially when the rock is ready; and that bridges should be built, when the timber is nearly prepared, as speedily as possible.

Conscious as the General Assembly members were “of the rectitude of our demand in requesting and urging the early completion of this work” and of the national importance of the road, they suggested that Congress appropriate enough funds, at once, to complete the road “and pay it over, from time to time, as it may be needed by the State of Indiana, to prosecute the work, under the direction of her board of internal improvement, it would greatly facilitate the work, and abridge the expenses thereof”:

All experience proves that public agents, stationed far from responsibility, are not so faithful and efficient as those who have to discharge their duties under the immediate inspection of those who have a control over their actions; and, in saying this, we do not mean to cast the slightest reflection on any of the former agents employed on the Cumberland road, but would most respectfully suggest the propriety of a change in the agency, believing it to be the better way.

The requested appropriation would have to be “specific” that funds were to be placed “under the control of the State within whose limits the expenditures are to be made, cannot be doubted by any one, as it is evident that, in such a case, there is no resort to novel power, for the direction of the appropriation would remain unchanged, and no other consequence follow than the change of one agency for another.”

The memorial concluded:

Therefore,

Be it resolved by the General Assembly of the State of Indiana, That our Senators and Representatives in Congress be requested to urge a speedy and liberal appropriation, sufficient to complete the Cumberland road in this State, and that they cause to be laid before each branch of Congress a copy of this memorial and joint resolution. [Memorial of The General Assembly of Indiana, Praying an appropriation for the completion of the Cumberland road within that State, United States Senate, 26th congress, 1st Session, Doc. No. 310]

The Final Cost Estimate

As Congress returned in December, President Van Buren submitted his third annual message on December 2, 1839. He began:

I regret that I can not on this occasion congratulate you that the past year has been one of unalloyed prosperity. The ravages of fire and disease have painfully afflicted otherwise flourishing portions of our country, and serious embarrassments yet derange the trade of many of our cities. But notwithstanding these adverse circumstances, that general prosperity which has been heretofore so bountifully bestowed upon us by the Author of All Good still continues to call for our warmest gratitude. Especially have we reason to rejoice in the exuberant harvests which have lavishly recompensed well-directed industry and given to it that sure reward which is vainly sought in visionary speculations. I cannot, indeed, view without peculiar satisfaction the evidences afforded by the past season of the benefits that spring from the steady devotion of the husbandman to his honorable pursuit. No means of individual comfort is more certain and no source of national prosperity is so sure. Nothing can compensate a people for a dependence upon others for the bread they eat, and that cheerful abundance on which the happiness of everyone so much depends is to be looked for nowhere with such sure reliance as in the industry of the agriculturist and the bounties of the earth.

After discussing foreign affairs, he turned to the state of the Treasury. Appropriations before he took office resulted in expenditure of “the very large amount of thirty-three millions.” In 1838 and 1839, appropriations decreased “somewhat, with total expenditures in 1839 likely to stay under \$26 million, “or six millions less than it was last year”:

With a determination, so far as depends on me, to continue this reduction, I have directed the estimates for 1840 to be subjected to the severest scrutiny and to be limited to the absolute requirements of the public service. They will be found less than the expenditures of 1839 by over \$5,000,000.

He did not discuss internal improvements directly, but did discuss the transfer of the U.S. mail from delivery on roads to transport by railroads:

Some difficulties have arisen in relation to contracts for the transportation of the mails by railroad and steamboat companies. It appears that the maximum of compensation provided by Congress for the transportation of the mails upon railroads is not sufficient to induce some of the companies to convey them at such hours as are required for the accommodation of the public. It is one of the most important duties of the General Government to provide and maintain for the use of the people of the States the best practicable mail establishment. To arrive at that end it is indispensable that the Post-Office Department shall be enabled to control the hours at which the mails shall be carried over railroads, as it now does over all other roads. Should serious inconveniences arise from the

inadequacy of the compensation now provided by law, or from unreasonable demands by any of the railroad companies, the subject is of such general importance as to require the prompt attention of Congress.

The documents accompanying the message included a report, dated November 29, 1839, from the Chief Engineer, Colonel Totten, the former member of the Board of Engineers for Internal Improvements. He reported that what he referred to as the National Road, had been completed east of the Ohio River on July 4, 1838, “and a small surplus of funds, has been, or will be, returned to the Treasury.” He continued:

That part lying in the State of Ohio has been entirely completed and turned over to the State, as far as Springfield, affording an unbroken line of road for 300 miles westward from Cumberland, Maryland; to within 54 feet of the western boundary of the State of Ohio; and considerable progress has been made in the remainder of the Ohio Road”

Colonel Totten, in addition to appending reports on the western segments of the road, explained:

It is designed, in future, to complete the road continuously from one point only in each State, thus avoiding the very heavy repairs involved in throwing open to public use a road that has been graded merely. And in order that the road may be maintained in good condition, when once completed, it is recommended that timely provision be made for turning it over to the respective States, in finished sections of such extent as the appropriations of Congress, from year to year, may allow.

He included Captain Dutton’s report, dated October 15, 1839, from Springfield, Ohio, regarding the work east of the Ohio River. He recalled that at the time of his last report, the Dunlap’s Creek bridge at Brownsville was the only remaining work on the original segment of the Cumberland Road:

The whole of the above work was finished, and the bridge completed in all its parts on the 4th of July of the present year, and the balance of funds remaining on account of this work, \$112.92, the disbursing agent has been requested to turn over to the credit of the Treasurer of the United States

The bridge now presents a handsome and substantial appearance; it has been open to, and used by the travel very nearly one year, and the heaviest loads pass it with the slightest perceptible jar.

Captain Dutton also reported on work in Ohio:

No appropriation having been made at the last session of Congress for continuing the road, the operations during the past year have been confined to the completion of the contracts entered into in 1838, several of them having, from the nature of the work to be done, and the terms of the original agreement, until this fall to run.

He reported that since his last report, all contracts “for the completion of portions of the road between Columbus and Springfield, have since been satisfactorily closed, as well as those entered into for grading, stoning, and grubbing, west of Springfield, and there now remains to be completed the contracts for building bridges and culverts west of Springfield, and one entered into during the past summer for 6 miles additional grubbing and clearing.”

The 43-mile section of between Columbus and Springfield “has been entirely completed during the past year, and given over to the State of Ohio, which has received and erected toll-gates thereon; 29 miles of the same were turned over during the past season. He explained his plan of operation:

The operations on the road in Ohio have been uniformly projected and carried on, with a view to its continuous completion and surrender to the State in sections, the advantages of this mode of operation being sufficiently obvious. The same plan is contemplated in the further prosecution of the work, until the whole shall have been finally completed.

In addition, Captain Dutton the work planned through 1842 and estimated its cost:

1840: \$292,000.00
1841: \$232,000.00
1842: \$114,166.26
Total: \$638,166.26

He concluded his report with a summary of how the road affected transportation:

From the rate of speed at which the mail is now carried over this road, it has been estimated that, in the event of its completion to St. Louis, three days will be sufficient for the transportation of the mail from Wheeling to that point, and four days for the transportation of passengers in the ordinary coaches. The gentle grades adopted west of Zanesville, together with the hard and smooth surface of the road, by diminishing the traction, allows the space and burden of the four-horse coaches customarily employed to be very considerably enlarged beyond their usual magnitude. For the same reason, the transportation, in wagons, of heavy loads of merchandise or produce may be effected with fewer horses, and greater ease and safety, on the finished Macadamized road.

On October 10, 1839, Major Ogden reported from his Terre Haute office on work in Indiana and Illinois. He described the condition of the road in Indiana:

The road has been opened, and is now travelled on, throughout its whole extent. About four fifths of the road has been considered as graded; but, owing to heavy rains, incessant travel, and other causes, it has been much injured, and must be regraded before the stone covering can be laid on. Those portions of the road upon which no grading has been done, are generally such as require the construction of bridges or culverts before the grade can be completed. Most of the bridges and culverts required on the road have already been constructed; but many of those constructed in the earlier progress of the work, will require to be

rebuilt, or must undergo extensive repairs. About 4,000 perches of building stone have been quarried for the Wabash bridge, and about 850 perches have been delivered at the crossing of the stream. Large quantities of building and Macadamizing stone have been collected, at different points, along the line of the road, and may, at any time, be applied to its construction. The road has been completed through the towns of Richmond, Centreville, and Indianapolis. About nine miles of road have been Macadamized, and are now complete.

He outlined a plan for operations in 1840 for completing the road between Richmond and Knightstown. Completing the grade of 34 miles of road, constructing culverts and bridges, and macadamizing 34 miles of road would cost \$606,431.76.

He also described the condition of the road in Illinois:

The road in Illinois has been opened to Vandalia, its present termination – and, with a few exceptions, (where by-roads are followed,) is travelled on throughout its whole extent. The grading of numerous points on the road has been so far advanced as greatly to facilitate the travel; but there are few of those intermediate points, where the grade can be reported as complete. Most of the bridges and culverts, required on the road, have been constructed; and many of those built in the earlier stages of the work, have already been removed and replaced by others of a more permanent character.

When the present contracts are finished, the grading and masonry of 31 miles will be finished in Illinois; viz: from the State line to near the west end of mile 14, with the exception of mile 3, (the culverts on which remain to be built,) mile 18, and from the 74th to the 90th mile, inclusive.

Major Ogden concluded his report with remarks applicable to both States, beginning:

No appropriation having been made during the last session of Congress, for the continuation of the road in these States, the operations have, necessarily, been limited in extent, and confined to those portions of the road, the completion of which was provided for under previous appropriations.

The Superintendent having been called upon to furnish estimates, and a plan of operations for commencing at the eastern boundaries of the States of Indiana and Illinois, and for prosecuting the work in a continuous manner, and that project having already met the approval of the department, he now submits a plan in conformity therewith, and bases his estimates for future appropriations upon the same.

Whether the proposed plan of prosecuting the work in a continuous manner from a single point in each State be adopted; or whether the plan now in operation of prosecuting it from several points, be continued, it is not proposed to do any thing in the nature of repairs, or to construct any works of a temporary character; but to expend the whole appropriation in completing the road, in a continuous

and permanent manner, from the point or points of commencement, with a view of immediately turning it over to the States.

Nine miles of the road are now Macadamized and completed in the State of Indiana, and upon the supposition that the road is not to be Macadamized in Illinois, thirty-one miles of the road will have been completed in that State before the date of the next annual report. Under these circumstances, the propriety of making arrangements with these States, by which the road as finished, may be turned over, in ten-mile sections, is respectfully suggested.

What was needed was “a large and timely appropriation.” With work suspended, labor was plentiful and could be had at reduced prices, “and the General Government may now proceed with this work, without coming in competition with the States.” If Congress agreed on an appropriation early in the year, “the superintendent will be able to let out contracts, and to commence operations with the opening of the spring.” If an appropriation came later in the year, “the laborers of the country will have been engaged in other public works, or will have embarked in agricultural pursuits, the works cannot be put under contract till late in the season, and, then, the contractors will not be able to procure labor in sufficient abundance.”

He concluded his report with a discussion of the importance of the Cumberland Road:

The importance of this work, its general utility, and its purely national character, are now no longer, if indeed they were, questions of doubtful import. The United States mail is transported over this road, in four-horse post-coaches, daily in Indiana, and tri-weekly in Illinois. Travellers and emigrants are thronging this road, literally in thousands. Already it passed through portions of no less than six States of this confederacy. It united the Atlantic with the Ohio, approaches near the banks of the Mississippi, and seems destined, ere long, to embrace, in its ample span, the half of a mighty continent. And will it still be insisted, that this is a work of a local character, and that it is unworthy of a national construction?

This work was projected while some of the States, through which it now passes, were mere territories, and while others were yet in their infancy: States which have since grown to an importance, second only to the first of the Union. Some of these States have since undertaken, and are now executing, works surpassing in magnificence and grandeur the public improvements of many of the old States of Europe. They have intersected this road, and have united with it, making it only a single link in the vast chain of public improvements. And now, it may be asked, will the General Government abandon this work in its unfinished state? Will she stand idly by, while the States are thus executing their works, and behold hers the only unfinished link in the chain? [*Message From the President of the United States, to the Two Houses of Congress, 26th Congress, 1st Session, Doc. No. 1*]

On January 24, 1840, Secretary of War Joel R. Poinsett submitted a letter to Vice President Richard M. Johnson, president of the Senate, in response to Senator Young's

resolution, adopted January 30, 1839, seeking an estimate of the cost of completing the Cumberland Road. In addition to forwarding the report to the Senate, Secretary Poinsett begged leave “respectfully to call the attention of the Senate to the expense incurred by the department in obeying its instructions.” When Congress asks the Department to execute surveys “which cannot be done without the expenditure of public money, it is very desirable that an appropriation should be made for that purpose, at the same time that the call is made.”

The report was compiled by Chief Engineer Totten. He included a report by Captain Dutton on the Cumberland Road in Ohio and a report by Major Ogden on the road in Indiana and Illinois as well as its extension into Missouri. Colonel Totten pointed out that conducting a new survey of the route between Vandalia, Illinois, and Jefferson City, Missouri, had cost \$1,359.81. He added, “as there is no fund out of which this sum can be drawn, the accounts cannot be paid without a special appropriation of the amount by Congress.”

In a letter dated October 21, 1839, Captain Dutton summarized the road’s status in the State:

The road is now complete, and in the hands of the State, to the forty-third mile west of Columbus, the seat of Government. From that city to the State line, the distance is $96\frac{3}{4}$ miles, leaving $53\frac{3}{4}$ miles to be finished. The line is located through the State, and no further expense under this head will be incurred. The grading to the 48th mile is complete; the bridging to the Miami river on the 62d mile, and the clearing and grubbing to the 82d mile west of Columbus, are in the course of completion with the means now in hand. There remain $14\frac{3}{4}$ miles to grub and clear, $49\frac{3}{4}$ miles to grade, 35 miles to be bridged, and 53 miles to be Macadamized.

He outlined his plans for the next 3 years “to ensure its completion and surrender to the State early in 1843”:

This plan contemplated carrying on the work, so that ten miles might be given up in the spring of 1841, twenty miles in 1842, and twenty-three and three-fourths miles, being the remainder, in 1843. The amount of the annual appropriations required for the purpose being as follows:

For 1840, \$292,000;
For 1841, \$232,000; and
For 1842, \$114,166.26.

He added that the remainder of the work was in “a fertile and populous part of the State of Ohio, furnishing facilities for its construction superior to what has been met with on the seventy miles last completed”:

But the most important of all are timely and adequate appropriations, which will enable competent contractors, and workmen who have embarked in the business,

to continue upon the work, and also offer inducements for competition among the inhabitants of the country through which it passes, and in every respect contribute to the facility and economy with which the work may be conducted.

Major Ogden's letter, dated December 28, 1839, focused mainly on the section from Vandalia to Jefferson City, but included data on the cost of remaining work in Indiana and Illinois. He estimated that the cost to complete the road from the Ohio State line to Indianapolis was \$1,232,195 (to include grubbing: \$197,097; culvert and bridge masonry: \$156,751; and macadamizing: \$856,330). He indicated that miles 69 and 70 were finished, while miles 63 through 68 were complete except for the macadam surface.

The estimated cost of completing the road from Indianapolis to the Illinois State line, was \$1,912,955 (to include clearing, grubbing, and grading: \$245,717; bridge masonry and superstructure construction: \$634,718; culvert masonry: \$48,424; and macadamizing: \$809,373). He indicated that west of Indianapolis, only the first 3 miles were finished.

Of the 90 miles from the Indiana-Illinois State line to Vandalia, Major Ogden considered 31 miles to be complete except for a macadam surface. The estimated cost of completing the road to Vandalia was \$1,432,139 (to include clearing, grubbing, and grading: \$178,254; bridgework and culvert masonry: \$195,056; and macadam treatment for the entire 90 miles: \$928,633).

For the section from Vandalia to Jefferson City, Major Ogden reported that he began his review by studying Joseph Shriver's 1828 analysis of the routing. From Shriver's report, Major Ogden concluded that "even an approximate estimate made from them would be far beyond the amount required for the completion of the road to Jefferson City":

I was led to this conclusion by the following facts, viz: Mr. Shriver was directed to make his survey and location "on a straight line," or as nearly so as the "nature of the ground should admit." His variations from this straight line were limited by the maximum grade of four degrees, and with this limitation he frequently found it necessary to make deep cuts and high embankments on from 15 to 20 miles of the route, and so much broken was this portion of it that a reduction of the grade to correspond with that of Ohio, Indiana, and Illinois, viz: two degrees, would have required an amount more than sufficient to have completed the road under a more favorable location.

I was not furnished with the data which governed Mr. Shriver's estimate of the cost of construction, but from my knowledge of the cost of such work was convinced that he had underestimated almost every item. Under these circumstances, I believed it necessary to make an examination of the entire route from Vandalia to Jefferson City, to obtain the information required to arrive at even an "approximate estimate."

He assembled a corps to survey and measure the route between the two cities via St. Louis. The goal was to find a route that “would combine the least variation of grade, with the least masonry, and consequently the cheapest route, without regard to any given straight line.” He was aware of the dispute between advocates for Alton and those for St. Louis as the crossing point along the Mississippi River, but explained that because the Shriver survey had made St. Louis “a point on the route, and considering it an important one, it was adopted” for the new survey.

The route was “through a slightly undulating country, the water courses easily approached and presenting no difficulty in crossing them.” In identifying a permanent route, the distance could be “advantageously shortened” to reduce the cost of culverts and drainage. “The present estimate is made on a line crossing the Mississippi at Illinois town, on the lower ferry, though it is believed the best crossing could be obtained at the upper ferry.”

West of St. Louis, Major Ogden’s route varied little from the Shriver alignment “until it strikes the dividing ridge of the Missouri and Merrimack rivers near the head waters of the Cuire Couse.” From there, it took a “somewhat circuitous ridge to the southeast corner of Jefferson City, making the distance 147.4 miles”

Major Ogden knew the route Shriver had identified west of St. Louis was shorter at 113.69 miles:

But when we reflect that a line run through a country so much broken, with a maximum grade of four degrees, would, in reducing it to two degrees, increase the distance nearly as much and then leave upward of 50 miles of extreme grade, when this gives but about 20, we naturally draw the conclusion that a road upon the dividing ridge can be travelled in less time and with a heavier load than one that crosses the hills and valleys in nearly a direct line; another and perhaps more weighty reason may be found in preferring the ridge route in the cheapness of construction and keeping in repair.

In view of the dispute between Alton and St. Louis, Major Ogden thought it “but right to reconnoiter a route on the north of the Missouri river, (in doing which I regret I had not more time at my disposal.)”:

Knowing the difficulty Mr. Shriver had in getting to the table land, I selected the present travelled road from Jefferson City to St. Charles for a particular examination, because I could hear of no other that had been longer in use; by way of explanation I would remark that the old and frequently abandoned roads, both in Illinois and Missouri, have decidedly a better location than those more recently constructed.

The distance between Vandalia and either crossing point would “not materially vary.”

His letter concluded:

The result of my observations on both sides of the river, leads me to the conclusion that if the road is to be made in a straight line, or as nearly so as possible, it should be on the north of the Missouri; if latitude is allowed for a good location it should be on the south side.

Colonel Totten summarized the results in a table:

[Report from the Secretary of War, Transmitting in compliance with a resolution of the Senate, estimates showing the cost of the extension and completion of the Cumberland road to Jefferson City, in the State of Missouri, 26th Congress, 1st Session, Doc. No. 122]

Seeking Funds in 1840

Although the short third session of the 25th Congress had considered funding for continuation of funding for the Cumberland in Ohio, Indiana, Illinois, and Missouri, the efforts had failed in the House. As the 26th Congress began, those bills were dead, but, members from those States renewed their effort.

On December 24, 1839, Indiana Senator Smith offered a resolution for consideration:

Resolved, That the Committee on Roads and Canals be instructed to inquire into the expediency of making an appropriation to continue the construction of the Cumberland road in the States of Ohio, Indiana, and Illinois the ensuing year; and that said committee also inquire into the expediency of appropriating a sum of money sufficient to complete said road to Jefferson City, Missouri, to be paid over to the several States within whose limits the road is to be constructed, in annual installments, as the same may be required to insure an economical, energetic, and speedy completion of the work: *Provided*, The States will agree to accept the appropriation and apply it to the object intended and discharge the General Government from any further appropriations: *And provided, also*, That the States have authority to lay and collect toll on said road sufficient to keep it in repair after its construction; and shall allow the arms and munitions of war of the General Government to pass on the same toll free.

Illinois Senator Young of the Committee on Roads and Canals reported a bill on January 13, 1840, to appropriate \$150,000 for each of Ohio, Indiana, and Illinois, to continue construction of the Cumberland Road. It was read and ordered to a second reading. On January 29, on instruction of the committee, Senator Young asked that the Senate take up the bill as a special order. The Senate voted 25 to 12 to make the bill the special order of the day for February 12.

In the House on February 6, Representative John W. Davis introduced several memorials from his home State of Indiana including:

Also, the memorial of the National Road Convention, held at Terre Haute, Indiana, in July 1839. Mr. DAVIS moved that it be referred to the Committee of Ways and Means.

Representative Zadok Casey of Illinois offered a motion to amend the referral:

And that said committee be instructed to report a bill, making an appropriation of one hundred and fifty thousand dollars for each of the States of Ohio, Indiana, and Illinois, to be expended on the national road in said States, in the year 1840, under the direction of the War Department; said appropriation to be subject to all restrictions and conditions of former appropriations on said road.

When a question was raised about whether the motion was out of order, Representative Casey argued that “it was perfectly competent at any time to move instructions to a committee on any subject committed to its charge.” The *Globe* summarized the result:

This motion having elicited debate, under the rule, lies over one day. The petition, however, was ordered to be printed.

The first order of business on February 8 was Representative Davis’s motion to refer the memorial of the National Road Convention to the Ways and Means Committee and the Casey Amendment on instructing the committee to report a bill. Representative James Rariden of Indiana pointed out that the committee had omitted the Cumberland Road from its estimates and that the Secretary of the Treasury had not included it among objects that should claim the attention of Congress. These omissions “placed this matter in a very unfavorable position”:

It was important to the people of the West to know the cause why it was omitted from the estimates. Whether it was a temporary abandonment, or was only because of the embarrassments of the Treasury at this time. It would be remembered by the House that no appropriation was made last year to carry on this road, and the consequence is, that the materials already purchased are being wasted and going to decay; and even parts of the road, which were partially completed, are in a condition to incur a total waste of the moneys expended, if something be not done to arrest the decay. It was important to know whether it was to progress; and it was for that reason that the friends of the measure took this course to bring the matter before the Committee of Ways and Means, inasmuch as there was no recommendatory to Congress by the Executive, to show the importance of taking some action on the subject. He did not consider it proper, then, to go into the merits of the question, or discuss the subject, unless something more tangible should be presented.

Representative Pickens said he thought the purpose of the Casey Amendment was to get the House to vote to let the committee know of support for an appropriation for the

Cumberland Road. He asked, "was the House prepared to march up to this question at this early period of the session?" Instead of bringing up the subject in this roundabout way, he recommended waiting until the Cumberland Road came up "in the regular way." He also thought it was "fit and proper to let the Committee of Ways and Means pursue the regular routine of the high and responsible duties committed to them, without being embarrassed by instructions like these." Moreover, if the resolution were adopted, other members would introduce motions for their own favorite measures:

Let us wait until we know what are the resources of the country, before we commit ourselves to an appropriation for this or that particular measure. Was this Cumberland road of more importance than the civil and diplomatic appropriations, or the appropriations for the army and navy? Why, then, should this matter be discussed in advance? It was unwise, impolitic, and unjust, thus to override the important business of the country. He looked upon the resolution as inexpedient and unnecessary, and plunging the House into embarrassment and difficulty, and as nothing less than prematurely voting on the passage of the Cumberland road bill. Mr. P. concluded by moving to lay the resolution on the table.

Representative Casey asked for a call of the House. He wanted "a decisive expression of the opinion of the House on a question of this importance." The call of the roll resulted in 170 members answering the call, but before a vote could be taken, Representative William W. Wick of Indiana asked Representative Pickens to withdraw his motion. Representative Wick, who wanted "to make an explanation personally interesting himself," promised that after doing so, he would introduce the motion to lay the motion on the table.

Representative Pickens withdrew his motion, prompting a debate on whether he had the authority to do so in exchange for the agreement with Representative Wick; when Representative Pickens reintroduced his motion, the House debated whether he could do so. In the end, Speaker of the House Robert M. T. Hunter, a Whig from Virginia, ruled that Representative Pickens had the right to withdraw his motion but could not reintroduce it; the reasons for the withdrawal were of no concern.

This ruling gave Representative Wick, an attorney serving his first term in Congress, the opportunity he had sought. He did not want anyone to think he agreed with his colleague, Representative Rariden, who said the purpose of the motion was to determine if the Executive had abandoned the Cumberland Road. That was not the case:

But, sir, I find in the estimate coming here from the Topographical bureau, that a large sum for the Cumberland road is included. Will my colleague say that the Topographical bureau is no part of the Executive branch of this Government? Again: this estimate of the Topographical bureau is sent to this House, sanctioned by the Secretary of War, and accompanying a communication from the Department over which he presides, and to which the Topographical bureau is an appendage.

He was referring to a Message from the President of the United States to the Senate on January 8, 1840, describing the operations of the Topographical Bureau during 1839. He began:

I transmit, herewith, for your consideration and action, a communication from the Secretary of War, which is accompanied by the documents from the Military and Topographical Engineer Bureaus

It estimated the cost of completion for the Cumberland Road in Ohio, Indiana, and Illinois, along with a proposed appropriation for 1840:

	<u>Estimate</u>	<u>Appropriation</u>
Ohio	\$ 638,166.26	\$100,000.00
Indiana	3,144,250.20	150,000.00
Illinois	1,432,138.49	150,000.00

The report did not discuss the basis for these figures; they appeared in a table estimating the funds required to complete civil works under charge of the Engineer Department, and an estimate of funds required for operation during 1840. [*Message from the President of the United States, Showing the operations of the Topographical Bureau during the year 1839, United States Senate, 26th Congress 1st Session, Doc No. 58*]

Even if the Executive had abandoned the Cumberland Road, it was of no importance. Whether to appropriate funds for the project was a legislative question:

At the last session of the last Congress, the appropriation for this road was vetoed, not by the Executive, but by Congress The Executive could find a reason for passing the road by, in the refusal of Congress to make appropriations for it. He might have inferred, from the action of Congress, that public opinion would no longer sustain appropriations upon the Cumberland road. But I infer very differently from my colleague upon this subject. I repeat that I see nothing from which to infer that the Executive intended to defeat appropriations upon the Cumberland road.

He regretted if anyone put a political cast on the issue. He was expressing his personal views as much as “to state the grounds upon which the subject, in my opinion, stands, as it is to disclaim sympathy with those who incline to give a political aspect to the action of the House upon the matter.” Referring to the two-percent fund, he said it was dispensed in accordance with the compact between the General Government and the new States, but was now all expended:

Suppose this to be true, is it inequitable for the Western States to expect a small advance in return, out of a fund which will soon indemnify the Treasury?

Again, the people of the Western States have been taught, by more than thirty years’ legislation, to expect appropriations for, and the final completion of, the

Cumberland road. They have seen engineers passing along through Ohio, Indiana, Illinois, and at least a part of Missouri. They have seen large sums expended year after year, and, finally, they have seen, during the past year, an estimate of the probable cost of the road, taken by engineers appointed by the Government, and acting under its authority. Think you, sir, they will now see the work abandoned, and not hold responsible those who contribute to the defeat of this their great measure.

Sir, a monarch, a despot, would not first instruct, by a course of action kept up for thirty years, a portion of subjects, to expect a particular object to meet his favor, and then all at once abandon it.

The Congress and the Executive Branch had “produced the expectations which I have stated”:

Will not a jealous people, think you, mark those who defeat this measure? It is their all absorbing interest. Even general politics (I mean party politics) are absorbed by it. They will not deem that man, or that party, orthodox, who or which may contribute to disappoint hopes raised by your predecessors, the great and the good of past years, (they think they were wise, too,) who have covenanted, by implied contracts, stronger than mere party considerations – ay, strong as national faith – to continue appropriations, reasonably apportioned to the condition of the state of the Treasury, upon the Cumberland road, or make some equitable, friendly, and final disposition of the subject, far different from ceasing to appropriate, without reason given.

As promised, he then renewed Representative Pickens’ motion to lay the matter on the table, but in hopes it would be defeated.

The motion was defeated, 86 to 111.

Representative Richard Biddle of Pennsylvania, who listed his party as Anti-Masonic, was the next speaker. (The Anti-Masonic Party, founded in the 1820, condemned the Masons for their secrecy, exclusivity, and undemocratic character, but had gradually broadened its principles to support internal improvements and protective tariffs. By 1840, the party was moribund, with many of its members having shifted to the Whig Party.) He summarized Representative Wick’s personal observations as proving in regards to the budget, “that the President, in the mode in which he has presented the subject, has acted fairly.” Representative Biddle disagreed:

The President, he thought, had presented it in such a way as would best promote electioneering purposes. He had done it in such a way as would place the legislative branch of the Government in a wrong position before the country – as to throw the odium of extravagance on Congress – of going beyond the estimates.

He quoted President Van Buren’s message to Congress on budget reductions:

With a determination so far as depends on me to continue this reduction, I have directed the estimates for 1840 to be subjected to severest scrutiny, and to be limited to the absolute requirements of the public service. They will be found less than the expenditures of 1839 by over five millions of dollars.

This claim, in Representative Biddle's opinion, "was prepared with the consummate skill of a veteran politician – it was something compendious, which would do to carry to the mill or the market, for electioneering purposes." He wondered if Representative Wick could identify "a single abuse" that President Van Buren had corrected or "where a single retrenchment had been made in the expenses of Government." He added, "Not a clerk, whose services were unnecessary, had been dispensed with." To further illustrate his point, Representative Biddle referred to the war in Florida, known to history as the Second Seminole War (1835–1842), to force the remaining Seminole Indians to migrate to Indian Territory in modern Oklahoma:

He then adverted to the waste of the public money in Florida by the mismanagement of the operations there – denounced the Executive because he had presented no estimates to carry on future operations there, where military forces were as much needed now as heretofore – and attributed the change in that policy to a desire to prepare for the coming election, by presenting a seeming reduction of the expenditures. But he believed that all which would be saved from that source would in the end be wasted on something else which should claim less of the attention of the Government.

He referred to the "imbecile management" of the war, although the phrase was left out of the *Globe* report, as would be indicated later in the session.

The estimates were, he believed, phony:

He has called for but eighteen millions in the estimates, when, in fact, the appropriation by Congress will not be less than twenty-five millions. This will be the issue presented to the people – that Congress would be chargeable with all the extravagance – and that it would be used as an argument to prove that if the Executive had sole control of the purse, seven millions would have been saved of the people's money.

The President and heads of departments were shrinking from introducing certain items into the estimates, "and after these estimates had gone abroad, they would be found sneaking before the committee to prevail upon them to insert those items in the bills to be reported":

He charged the President with lending his countenance to extravagance, and with skulking from the responsibility of recommending the measure which led to it. He contended that if the regular estimates for the continuance of the Cumberland road were omitted on account of the embarrassed condition of the Treasury, that the Executive should have told the House and the country so.

Illinois Representative Reynolds said this subject was important to the West, and he urged his colleagues to “discard politics and discuss it with reference to its merits alone.” For his western colleagues, no political capital could be gained by either party:

In fact, it would be good policy on my part to avoid a political discussion, for I am well aware that my remarks would appear light in comparison with the sound and eloquent stirring speech you just heard from the gentleman from Pennsylvania [Mr. Biddle.]

Representative Biddle interrupted to say that he would not have spoken at all “if it had not been for the remarks made by the gentleman from Indiana, who obtained the floor for the purpose of making a personal explanation, and then went on to a defense of the Administration.”

Representative Reynolds resumed, again emphasizing the importance of keeping politics out of the debate. He was, however, not adverse to asking the President or department heads for “proper and legitimate information.” But turning to the subject at hand, he said:

But suppose, Mr. Speaker, that the appropriate Departments of Government did not make the estimate for an appropriation to carry on the Cumberland road; are we, in that event, to fold our arms and sit still? Are we not bound still to do our duty, and press this measure on the consideration of Congress on its own merits?

In the case of the Cumberland Road, all he asked was for “an impartial investigation, and a discussion of its merits”:

I am friendly to the doctrine that the National Government ought not to embark in a general system of internal improvements. I am clearly satisfied, in the main, that is the correct doctrine. But the improvement now under consideration manifestly forms an exception: all general rules have their exceptions, and the Cumberland road is one in this case.

The road, he pointed out, was “the work of the most wise and talented men that our country has ever produced.” In 1806, President Jefferson gave “life and existence to this great and useful work”:

The individuals who established this great improvement in the country exercised those enlightened and enlarged views of public policy that will do honor to them to the latest posterity. This public highway across the mountains, and through the valley of the Mississippi, will never cease to exist. It will last *forever*, I hope, as it is *now*, a monument to the honor and glory of the country. I presume, at its creation, the rancor of party politics did not figure large or strong; but the public utility of the measure guided the councils of those sages that produced this great work; and in the same spirit of meekness and forbearance to each other must we expect to continue it.

This measure was a Democratic measure, as even “the most scrupulous Democrat cannot doubt.” President Jefferson “and the Democratic party were its parents”:

It is a pure, legitimate child, both conceived and brought forth in Democracy. There is no excuse that it is a mongrel or mule breed, and I hope no one will oppose it on this ground.

This work, with its “constitutional parentage” had been continued for more than 30 years:

It had been the favorite of the Government through the administrations of the successive presidents, Jefferson, Madison, Monroe, Adams, Jackson, and Van Buren, and it had in the successive events of peace and war, through this long course of time, the necessary appropriations to continue its construction.

To continue that support, the friends of the road must “give to it that importance of character which will have great influence with the people,” while opponents must provide “strong and cogent” reasons to “justify that abandonment of this improvement *at this time.*”

No one doubts its public utility. “It connects and cements together remote parts of the Union, and brings together the East and the West. It affords to all travelers, of every grade and description, an easy and commodious passage over the vast and stupendous Alleghany mountains.” Before this road, “it would appear to be almost impossible for any animal except the birds of the air to cross them”:

These high mountains, precipices, and deep ravines, have yielded to the art and power of man, and at this time, there is a good road constructed over them, so that a team can convey across them seventy or eighty hundred weight in a wagon. This improvement is suited to the convenience and capacity of all to use it. There is no monopoly in it. It is not confined to a company; but free and open to all mankind, on payment of a very small toll to keep it in repair.

It would be unseemly, after more than 30 years, for Congress to abandon it. “Can it be justified by saving a few dollars?” Doing so would injure substantial interests in the country, “but also tarnish that character for wisdom and consistency, which this nation ought, and I hope will, sustain.”

No one could claim a lack of resources to carry on this work. “The people of this Government have more wealth among them at this time, than they had at any former period,” even though bank notes were not as plentiful. Even during the 1812-1814 war against Great Britain, the work continued:

During the war with one of the most powerful nations on earth, we heard of no such excuse as the want of money to carry on this *same* work. The money and other means of the nation were exerted to the utmost in the vigorous prosecution of this war, yet the work on this road was not permitted to stop; and, therefore, let

it not be said, at this day of prosperity of our country, that we have not the means to finish this road, as we contemplated.

The country pledged its “faith and character” on finishing the road. The people who settled along its location did so in good faith that the country would finish the road, thus increasing the sale, and the price, of public land:

I ask any candid man, under this view of the case, if the completion of the Cumberland road would not form an exception to the general rule, that the Government ought not to embark in a general system of internal improvements?

He offered another reason for continued support of the road, namely the fact that the new States it passed through “have not the power to tax the public lands within their limits”:

If you will give us the public lands within our borders, we will never again solicit an appropriation to continue the Cumberland road.

Representative David Hubbard of Alabama, a Democrat, interjected that he, “for one, would give his right of the public lands to Illinois, if she will make the road.”

Representative Reynolds appreciated the thought but pointed out that both States, Illinois and Alabama, were laboring “under the same vassalage . . . and therefore we have a fellow feeling for each other; but I can hear no such expression from gentlemen representing any of the old States,”

Before the States can build their own projects to the fullest extent, they must all be on an equal standing:

The new States through which this road passes, are debarred the right to tax a great portion of the soil within their limits, and thereby are deprived of the resources which appertain to the old States. If we were placed in the same condition with the old States, and had an equal standing with them, we would join them heart and hand in excluding all these things from the action of Congress. We would be foremost with the first to confine the action of the General Government to subjects purely national, and expressly recognized by the Constitution. It is the pure and legitimate doctrine to exclude from the halls of Congress all matters that can be transacted by the State authorities, and circumscribe the patronage of the President within the legitimate pale of the Constitution. I am free to grant and subscribe to all this doctrine; yet the national road, for various reasons which I have, and will present to this House, forms a marked and decided exception to this rule.

He was extremely pleased that the doctrine of restricting Congress to national action “is so well recognized and established at this time.” The new States were “heartily tired of our vassalage to the General Government in respect to the public domain.” They were “crippled in our operations, deprived of the high and equal stand in the Union with the other States,” and the situation was “becoming *intolerable*” for the new States at the

same time “the Government itself is tired of legislating for us in relation to the public lands.” The day when the General Government’s “undue influence” over the public lands comes to an end “will be hailed as a fortunate epoch in the history of the new States.”

Until then, the friends of the appropriation bill also base their arguments “on the solid basis of a compact between the General Government and the new States through which the road passes”:

This compact being made between the two Governments with that spirit of equity and justice that always has characterized the transactions between the State governments and that of the United States, it remains to be consummated on the part of the General Government in the same spirit.

Representative Reynolds said the general government “ought, and I hope will, execute the contract according to the common sense meaning of the same.”

He pointed out that much of the two-percent funding expended on the Cumberland Road occurred on the original section before the western States entered into a compact. Referring to the two-percent fund collected from the new States, he said that he understood that “the sum arising from the sales has not yet been expended on the work.” He did not have the figures, but was confiding in the information given me by gentlemen in whom I have the utmost confidence”:

The money that was expended on the construction of this road before the contract was made cannot be taking into consideration under the contract. The amount alone that was expended on the work since the contact was made is the sum that comes under the provisions of the contract.

As a result, this view “is so manifestly just and right that to mention it is sufficient to convince all of its truth; and therefore I will urge it no further on the House.”

He observed that the general government had appropriated and expended upwards of \$30 million in the past year, with all revenue from the sale of public lands in the State going to the general government, but “not one dollar was appropriated in or for the State of Illinois, or in the western country.” He was not complaining that the amount overall was too large in view of the general government’s many responsibilities. “But it seems extraordinary that the State of Illinois, or as far as I am informed, none of the western States, received one cent of these appropriations.” It would be “idle and foolish” to expect expenditures in Illinois for unimportant objects:

But I would ask this House if the national road be not a legitimate object? It is of such character and importance, that the General Government ought to be bound to notice it. If there be a national improvement in the Union, it stands foremost in their front ranks. The Cumberland road is, therefore, a fit subject on which to equalize the expenditures and disbursements of the public money.

He referred to Representative Pickens, who was usually “a very liberal and accommodating gentlemen,” but in this matter had formed an exception:

He thinks the measure is brought forward a great deal too soon. The objections of the gentleman remind me of those of a certain man in the West, who was very lazy, and therefore disliked to plant his corn. When urged by his neighbors to do so necessary and important a work, he would first cry, “It’s too soon, it’s too soon;” and afterwards, when the season was so far advanced that he could not say this with any face, he would cry, “It’s too late, it’s too late;” so his corn was never planted.

This will be the case with many of these *too soon* gentlemen; they will not at any time, early or late, vote for this measure.

In that regard, some objected to giving instructions to the Committee on Roads and Canals to report a bill, arguing that the committee ought to be asked to look “into the expediency” of reporting a bill. “This mode of proceeding had in it no efficiency or force, and would amount to nothing at all”:

If it goes at all to the committee, it would have with it the voice of the House, which will give to it respectability

After a bill is reported to the House, time will be given for examination and discussion. It cannot be hurried through the House into a law, without the due and necessary time for deliberation and reflection. In every point of view in which I am capable of examining this measure, I am satisfied I ought to receive the favorable action of this Government, as it has done for the last thirty years. I hope and trust it will.

With that closing, he completed his remarks.

Ohio Representative Mason agreed about keeping politics out of the debate. The country’s two great political parties were not divided on the Cumberland Road, although some members of the parties may differ on the subject:

He believed if the gentlemen from the West – the section of country so much interested in the measure – should fall out among themselves as to expediency, the enemies to this road would look on and say, let them fight it out; because they know that that would be the most effectual way to defeat it. Therefore, the gentlemen from the West, of both parties, should act with some concert. For one, he disclaimed any intention or desire to make political capital out of the question, as had been attributed to some by the gentleman from Indiana. That gentleman had said it was not a party measure in the Western country.

Representative Wick interrupted to explain that what he had said was “that it was in the West an all absorbing question, more so than any question of general politics.

Before Representative Mason could continue his remarks, the House adjourned.

On February 10, Senator Smith, on behalf of the Committee on Roads and Canals, reported a bill consistent with the resolution he had introduced earlier. It called for appropriations, by installments, to the States to complete the Cumberland Road in Ohio, Indiana, Illinois, and Missouri, and transferring the road to the States with certain restrictions. The *Globe* reported:

The bill was accompanied by a long report, in which it is maintained that the Cumberland road was conceived and commenced in the wise and statesmanlike policy of the times, with an eye to the payment of the Revolutionary debt, by making the Western lands tributary to that object; that the Cumberland road is a great national work, to the final completion of which the national faith is pledged; that the contract between the General Government and the States of Ohio, Indiana, Illinois, and Missouri, under what is termed the compacts, was for the construction of the road; and the two per cent. was not *granted* to the States to make the road, but *reserved* by the General Government to make one, and that she is bound to construct it under the compacts at all events; that if the General Government could be viewed in the light of a trustee to the States, still she was bound for a judicious and economical application of the whole fund committed to her charge to the object intended, and she could not discharge herself by saying that the fund was reduced by grants, donations, the payment of military bounties, reductions of price, and pre-emptions, authorized by herself; nor could she escape from her responsibility by saying that she had laid out her work on a scale too expensive for the fund reserved by her to complete; that a transfer to the States of the funds, annually, with the future charge of the road, would insure a continuous and energetic prosecution of the work, upon the most economical principles. Each position, and others, are examined at length.

Senator Smith appended the letters from Captain Dutton and Major Ogden on cost and timing that had been included in Secretary Poinsett's report of January 24, 1840. [In *Senate of the United States*, February 10, 1840, Mr. Smith, of Indiana, made the following report: To accompany Senate Bill No. 215, 26th Congress, 1st Session, Doc. No. 160]

The bill was read a first and second time.

On February 11, Speaker Hunter again directed his colleagues to the Casey Motion referring the National Road Convention petition to the Ways and Means Committee with instructions. As the Speaker noted, Representative Mason still had the floor.

Representative Mason resumed his discussion "at great length" in support of the motion. Continuation of the Cumberland Road, he said, was a subject of greater interest to the people of the new States than any subject before Congress. It had received the support of President Jefferson and every President since then, as well as distinguished gentlemen of both political parties, including Representative Cambreleng, chairman of the Committee of Ways and Means in the previous Congress. This support across the political spectrum

was behind his “sincere desire to disembarass this subject of party considerations, and adverted to the criminations and recriminations which would result from mixing up party politics with this question.” Those who supported the party, of whichever party, would not lose “any political standing.”

He denied that the motion had been suddenly sprung on the House. The fact that the Treasury Secretary’s omission of an appropriation for the project in his estimates “was an ample justification of the motion made by the gentleman from Illinois.” He also referenced the “strong memorials on this subject, which had already been presented to the House.”

He disagreed with Representative Pickens that the committee would see the instructions in the referral as mandatory regardless of the resources available to the general Treasury:

Mr. M. went on to show that this was not the case, and hoped that no gentleman would vote against these instructions, under such a misapprehension.

He then spoke “at length” to explain the grounds for the motion. He began by discussing the compacts with the States involved and “the solemn acts” of Maryland, Pennsylvania, and Virginia:

After an argument to show that it was the duty of the Federal Government to carry out the terms of the compact, he contended that the Cumberland road was no part of the internal improvement and tariff system which was such a bugbear to Southern politicians, and the death knell of which they congratulated themselves with having sounded. He invited Southern gentlemen to enter into an argument with him on this point, telling them that neither they nor their constituents understood the true merits of the question.

He discussed President Jackson’s veto of the Maysville road bill “to show that there was no necessary connection between the Cumberland road and the tariff and internal improvement system; and in connection with this part of his argument, quoted also the opinions of Mr. Calhoun.”

He regretted the prejudices against the Cumberland Road and “the lamentable want of information on the subject.” In closing, “he earnestly appealed to members to examine deeply into it, assuring himself that on being possessed of the requisite information, they would not fail to give to it their hearty support.”

Representative Virgil D. Parris, a Democrat from Maine, said that judging from Representative Mason’s remarks, “I should infer that all his batteries were directed toward the members from the South for interposing their objections to the constitutionality of appropriations for the Cumberland road.” Representative Parris said that although he was from the North, he had “objections on constitutional grounds, as well as against the injustice and inexpediency of this measure.”

Referring to Representative Mason, he said:

The gentleman from Ohio, in a long and able speech, at last succeeded in proving, what all are willing to admit and that no one has ever denied, that the States of Ohio, Indiana, Illinois, and Missouri, were entitled, under the compact made with them by the General Government at the time they were admitted into the Union, to five per cent. or one twentieth part of the net proceed of the sales of the public lands within their limits, to be applied to the making of roads leading to and through them. No one, I apprehend, will attempt to deny that such obligations were imposed upon this Government, to be observed in good faith when they became sovereign States of this Union.

The question, he said, was whether the general government had performed its part of the compact. This was “the great question to be answered; and upon the issue rests the fate of this bill.” He planned to demonstrate, by documentary evidence, “that millions upon millions from the Treasury have been expended for this measure, after every obligation on the part of the Government had been fulfilled.” After he does so, he expected “the coöperation of every advocate for economy and reform, here or elsewhere, in arresting the progress of a system of internal improvements which I believe to be unconstitutional, inexpedient, and unjust.”

He cited the Enabling Act of April 30, 1802, for the admission of Ohio, and the Act of March 3, 1803, which, together, set aside five percent of land sale proceeds for roads within and leading to the State. The Enabling Acts for Indiana and Illinois had similar provisions. Those acts are the sole basis for the compact between the general government and the States:

I am now prepared to spread before this House and the country evidence which cannot be battered down to prove the General Government has more than complied with the terms of the compact.

The evidence was a report from the Secretary of the Treasury, transmitted during the 25th Congress, discussing the proceeds from land sales and the amounts appropriated for the Cumberland Road. To that point, the general government had expended \$6,318,739 on the Cumberland Road. Deducting the 5 percent in land sales revenue the States were entitled to under the compact, left expenditures of \$5,471,907 beyond land sales proceeds:

Here, then, we have presented a fact as incontrovertible as it will be astounding to the country, that the Treasury has been robbed . . . of the people’s money, and squandered in the States of Ohio, Indiana, and Illinois, to make them roads at an average expense of fifteen or twenty thousand dollars per mile. If the authority I have here introduced be correct – and I challenge contradiction – then it is sufficiently shown that these compacts have been more than fulfilled by the Federal Government, and that these States, now asking an annuity of about half a million dollars, to be expended on this road, are indebted to the Government, upon every principal of equity, \$5,500,000.

But amid this profuse expenditure of the public money the country naturally

inquires where and when it is to terminate.

He laid a document on the table containing the engineers' estimate of the cost of completing this work, namely "about eight million dollars additional to the amount already expended":

I find, also, that one single mile of this road is estimated to cost \$211,000, and another mile the enormous sum of \$460,000. The expense in paving and macadamizing this road for a distance of more than six hundred miles, through parts of the country yet an unbroken wilderness, exceeds per mile the cost of any street in any city of this Union.

These figures, which came from Major Ogden's report of December 28, 1839, covered the bridge across the Wabash River. He estimated that mile 71 west of Indianapolis would cost \$464,401.40:

Grading:	\$ 22,679.40
Culvert Masonry:	\$ 252.00
Bridge Masonry:	\$394,200.00
Superstructure:	\$ 37,000.00
Macadamizing:	\$ 8,880.00

Mile 72 would cost \$211,551.00:

Grading:	\$ 87,226.50
Culvert Masonry:	\$ 0
Bridge Masonry:	\$ 73,445.00
Superstructure:	\$ 42,000.00
Macadamizing:	\$ 8,880.00

Without explaining the high cost but with that high cost in mind, Representative Parris asked if any of his colleagues who felt bound by the compact, want "to enter into such a splendid system of internal improvements?" He added:

Was it originally contemplated by Mr. Jefferson, whose authority the gentleman from Ohio invoked, that this road should be a magnificent structure, or that a visionary project should grow out of it, affording any portion of the people a pretense for plundering the Government? No, sir.

The original motive was to build a road to link the Atlantic States with the pioneers in Ohio. That road has been built and "the Alleghanies, that once presented insuperable obstacle to internal intercourse, have been surmounted." In short, the concerns that prompted construction of the road "have long since ceased to exist."

Nevertheless, the road continued beyond the Ohio River:

But when and where, sir, is this road to terminate? On the banks of the Mississippi, or at the base of the Rocky mountains? No. These are barriers, say the friends of this visionary project, which the national Treasury must subdue; it can be limited only by the shore of the Pacific. The cost in passing the Alleghanies, the most difficult and expensive part of the road, was originally estimated at \$6,000 per mile. You have extended it about six hundred miles into the level prairies of the West, and now a single mile is computed by engineers to cost the enormous sum of \$460,000. Let the work go on under the sanction of this Government, and its expense increase in the same progressive ratio, and the wealth of this continent would be exhausted in its completion.

If any of his colleagues were to try to leave the impression that the general government was under obligation for “any acts of disinterested benevolence . . . such an inference would be most erroneous and deceptive.” To illustrate, he cited two acts that granted public land to the State of Ohio for internal improvements:

- Act of February 28, 1823, for a road commencing at the Miami rapids and ending at the western boundary of the Connecticut Western Reserve.
- An Act of March 3, 1827, for a turnpike road from Columbus to Sandusky.

(The Connecticut Western Reserve, in northeastern Ohio south of Lake Erie, was a portion of the Northwest Territory that the State of Connecticut retained a claim to when it ceded its colonial claims to the area. The State sold its claim to land speculators.)

His understanding was that Georgia, North Carolina, and Virginia, which had claims to western lands dating to the colonial era, had ceded those claims to the general government “not for the purposes of education or internal improvements, nor to be appropriated for any State or local object, but for the purpose of liquidating the public debt that accrued to the country in our revolutionary struggle.” The sales of the public land had not come close to meeting that end, with costs to the general government exceeding income by about \$103 million:

Who, then, can doubt the injustice of diverting that source of the revenues of this Government – the proceeds of the sales of public lands – to works of internal improvement? Every dollar of the vast amount of money abstracted from the Treasury and expended on the Cumberland road was paid in by the customs. And who have paid this customs? The people of Maine and other States, who have no interest in this work, and who have contributed most largely to complete it, and not those of the States of Ohio, Indiana, and Illinois, that are receiving its exclusive benefits.

The public documents on file show that, in the ten years ending January 1, 1837, Maine alone paid into the Treasury, by imposts and duties, \$3,260,418; while Ohio, Indiana, and Illinois paid but \$13,586. The people of Maine have paid into the Treasury an annual average amount of \$326,000; while Ohio, Indiana, and Illinois have paid but \$1,300.

He estimated that Maine had paid \$300 to defray government expenses for every dollar the three States had contributed, while building roads at its own expense. He indicated that the new States he had mentioned had paid \$1 for every \$400 received:

In what part of the Constitution do gentlemen recognize the power to subject the people of the North or South to make roads for the West? Do they find it in the clause “to provide for the common defense and general welfare?” Sir, the old Federal doctrine, once advocated, that this clause of the Constitution gave Congress the power to work every species of injustice and rascality, under some plausible pretext of the public good, has been long since exploded. Is it found where power is given “to establish post roads,” or “to regulate commerce?” I am aware that the power to appropriate money for the Cumberland road has been claimed at different periods under all these clauses of the Constitution. But now all are abandoned, and its advocates rely solely on the stipulations of the compact. But whether you look to the compact or the Constitution itself for a foundation on which to rest this claim, it will be found as baseless as an inverted pyramid

If the power had been claimed under the Constitution, by its framers, to enter into a splendid system of internal improvements, and thereby recognize the gross injustice of robbing one portion of the country to benefit another, not a State of the Confederacy would have ratified it. I contend that Congress has no power to make appropriations for improving territory over which this Government cannot exercise exclusive jurisdiction.

By contrast, the framers had given the general government “exclusive” authority over only territories, including the District of Columbia, and over land acquired by State consent for construction of forts, dockyards, and other needed buildings:

If we had power to construct roads and exercise jurisdiction over them, the strong arm of Government could then be extended over any portion of this Union and, with its might, prostrate not only sovereignty of the States but the liberties of this people.

He then discussed more general grievances against the western States along the Cumberland Road. Was it not enough, he asked, that these States enjoyed a better climate and fertility of the soil than the North, “without asking us to make their roads at an expense of fifteen or twenty thousand dollars per mile?” He continued:

Is it not enough that those who have taken possession of our public lands, in open defiance of law, have demanded and received at our hands preemption acts, graduation laws, and laws confirming their titles? Sir, if I could but take these gentlemen to my district, and there let them witness the enormous expense and toil that an industrious and enterprising population are subjected to in making their roads passable through a mountain region, I could not fail to satisfy them of the gross injustice of plundering them of their hard earnings to make roads for squatters and pillagers upon our public domain. Such an outrage upon our rights

and our property is not only making infractions and innovations upon the most sacred obligations of the Constitution, but it is tearing out its very vitals.

If the people of the West want roads, we are very willing they should make them at their own expense, as the people of the North have done, without asking aid of the General Government. But if gentlemen will point out to me a constitutional power for repaying to the people of Maine what they have expended for making roads the last fifty years I shall be better prepared to reconcile an appropriation for the Cumberland road to the principles of equity and the constitutional powers and obligations of this Government.

He also cited the debt other States had incurred for internal improvements before the Panic of 1837— he cited Louisiana, Maryland, and Pennsylvania. They had “loaded their people with a debt of seventy-five millions,” an amount that should serve as a warning to the general government about incurring debt for internal improvements:

I opposed the introduction of a system of internal improvements in my own State at a time when this mania was sweeping through the country with such fearful rapidity, and I can now congratulate the people on escaping the vortex.

He had rejoiced in 1825 when President Monroe issued his veto of toll-gate bill; he read extracts from the message.

He also questioned the claim that the Cumberland Road had increased the value of the public land:

In 1802 the public lands sold in Ohio for two dollars per acre; but now they are sold for one dollar and a quarter. Besides, sir, I am told that there is not a foot of the Government lands within fifty miles of the Cumberland road.

He disagreed that the road was needed to “bind this Union together by the strongest ties”:

Is this Union, I ask, only kept together by the money that is robbed from the pockets of the people of one section to be expended in another? Is that the only ligament that binds the western country to this Union? I cannot, I will not believe it.

No, he said, it was held together by the blood of the Revolutionary War patriots, “and it cannot be dissolved until the deeds of a Washington, a Warren, and a Montgomery, are lost to the knowledge of mankind.”

He concluded his remarks by saying that if the principles behind this measure are accepted, “you might as well trample your Constitution at once under foot, and commit the destinies of the country to the unrestrained discretion of the central power”:

A splendid consolidation will tread upon the heels of a splendid system of internal improvements. This central power, with its hundred arms, and in every

hand a bribe, will penetrate every State of this Union. You may, awhile, indeed, wear the mere forms and trappings of a free State; but the canker will be at the heart. A gorgeous despotism, crushing beneath its iron heel the liberties of the people or the scattered fragments of the Union, wasting their blood and treasure in mutual strife, will tell the sad story of this last great experiment of free institutions.

Representative Joseph O. Hoffman, a Whig from New York, indicated he would like to address the House on the same subject, but on his motion, the House adjourned.

When the House returned to Representative Casey's motion on February 12. Representative Hoffman had the floor. He favored appropriations for the road, but opposed "the manner in which the measure was now brought before the House." In a lengthy speech not recorded in the *Globe*, he also objected to acting on the subject before the House "obtained some information with regard to the views of the Executive."

One of those speaking on the matter was Indiana Representative Tilghman A. Howard, a Democrat. He had been born and raised in Pickensville, South Carolina, opened a law practice in Nashville, Tennessee, and moved to Indiana in 1830. As a result, he was familiar with the part of South Carolina represented by Representative Pickens. (Representative Howard would resign from the House on July 1, 1840, to run unsuccessfully for Governor of Indiana.)

He regretted that Representative Mason's advice on leaving party out of the debate had not been followed. He cited the references to the Seminole war in Florida as an example, asking, "What has the Florida war to do with this great national highway?" He continued, "We are told that this has been an 'imbecile war,' conducted disgracefully," and discussed the impact of such words on the injured veterans of the war, but such, he said, "is the language implied by the course of those who call this subject into requisition for the purpose of converting it into political capital."

He also questioned why Representative Hoffman of New York had raised questions about the Indiana delegation to the House (not reported in the *Globe*). Where, he wanted to know, did the Representative from New York get such an intimate knowledge of Indiana's choice of Representatives. (Representative George H. Proffitt of Indiana acknowledged he had provided the information to Representative Hoffman.)

Representative Howard continued regarding the elections in Indiana:

But the honorable gentleman from New York had kindly informed us that it was the Cumberland road on which the election of that State turned; and that his friends failed on the ground of their supposed hostility to the measure, or their inefficiency in pressing the subject on the notice of Congress.

That was true in one district. In his own, he had a tough election battle, but the Cumberland Road was mentioned only rarely.

Citing another example, Representative Howard recalled that Representative Biddle had suggested that President Van Buren had sought “to bring public odium” on Congress by submitting low estimates of need. President Van Buren had frequently been criticized for extravagance and profligacy, but had Representative Biddle not heard of the “officeholders’ party,” the “spoils party,” and other similar expressions? These terms were applied to any group that was favorable to the Van Buren Administration. He took consolation in knowing that “denunciation from any quarter does not pass with the people for truth.” Anyone who seeks public favor, “unless armed with truth, although he may have a temporary triumph, must ultimately fail”:

The honorable gentleman from New York seems, in his remarks on the subject, to have resembled a mariner whose bark has been thrown between the counter currents of two contending areas. He would be pleased to favor this road, and yet he is unwilling to vote on this subject unless he can “hear from the palace” – until he can learn the views of the President.

Sir, suppose this argument had come from some friend of this Administration – what would we hear? That its author was a “palace slave.” It would be said that there was an effort to make this House subservient to the President, upon the great subject of expenditure.

Representative Howard next turned to Representative Parris’s remarks. “I am pleased to find,” Representative Howard began, “that he has had the good taste not to include in his published speech all the remarks which were delivered by him on the floor.”

Representative Parris interrupted to say “he did not write out his remarks, nor correct them, and had no wish to be answerable for his speech in any other form than that in which it was delivered.”

Representative Howard regretted “that some of the offensive remarks by that gentleman on yesterday had been left out of the printed report by his direction.” He asked Representative Howard if he knew that the western people he assailed were his own countrymen? If his reference to “squatters and pillagers of the public lands” had been confined to these walls, Representative Howard would not feel a need to answer them, “but when I remember that epithets habitually applied to individuals or nations give character, I feel bound at once to meet the injurious imputations implied in the language of the gentleman.” He wondered what potential immigrants to the west would think:

I should conclude that an eastern gentleman desirous of emigrating westward would esteem it necessary to provide himself with traps, snares, and the like, and when he should get there to use what in the western part of North Carolina they call a dead-fall, in order to catch and clear the country of squatters and render it habitable for civilized man.

For the information of that gentleman, I will tell him that the squatters of the West walk erect, are possessed of humanity, governed and influenced by the like

motives, principles, and feelings as ourselves, fearing but little else than the God that made them.

After a lengthy discussion of the pioneers in the west, he said:

I have made these observations for the benefit of those who do not understand the western people. If gentlemen would travel on this western road, stop at Wheeling, now a city but lately grown into importance, cross the State of Ohio, and see on the line of this great thoroughfare the cities, towns, and villages, the farms, schools, and all the variety of improvements that distinguish the age, they would cease to apply offensive epithets to us, and be proud to become one of us

I have thus, Mr. Speaker, felt myself called on to notice several topics which have been introduced into this discussion, though not involved in the question before the House. I now proceed to briefly discuss that question.

He began with the question of constitutionality, which Representative Parris suggested was an insurmountable obstacle. He did not think he should be expected to address constitutionality, a topic that “has been performed by the ablest of our statesmen”:

The doctrine of strict construction has come, at times, from every part of the Union. In 1807 it was a fashionable doctrine in the East, about the time of the embargo. Yes, sir, it was then thought that Congress had power to *regulate commerce*, which implied its *continued existence*, and that it was unconstitutional to destroy commerce, as it was said the embargo did. So we have had it from other quarters, at various periods, usually attended with circumstances which rendered the extreme of strict construction *expedient*, in promoting the interests, for the time being, of the particular section from whence it has been urged. So of the doctrines of *consolidation*, and of *latitudinous construction*. Those, too, are convenient doctrines at times, not for any one particular section, but for every section of the country whose interests may render it necessary to resort to them.

He always tried to avoid extremes, preferring the “golden medium of truth.” When it came to the Constitution, he consulted the most “able expositor,” namely, “*the practice of the Government from its commencement to this time.*” Rather than consult abstract ideas such as strict construction, he would leave the theorists “to the enjoyment of their theories and content myself with the Constitution as practically expounded by the current and concurrent action of the several coördinate branches of the Government.” How, he asked, can government be administered, or certainty and stability given to its measures, “if mere abstract questions of power are never to be regarded as settled?” Saying that nothing is settled, “so far as the mere abstract question of power is concerned, would be to make the action of the Government as variable as the shade and as uncertain as the winds.”

That said, he asked if the general government had displayed any “concurrent actions of the different departments of the Government” with respect to the Cumberland Road:

I find that its action has been uniform for thirty-four years. It has gradually progressed from 1806 down to the present time. More than this; we have had the sanction of Jefferson, that distinguished expositor of the Constitution, to whose opinions many of us are prone to bow with the most unqualified deference. We have had the sanction of Madison, Monroe, the distinguished individual who succeeded him, now a member of this House, of Jackson, and our Chief Magistrate. And, here, sir, I would remark, in deference to the opinions of the President on this subject, without knowing anything more than may be known to any of the gentleman on this floor, that should a bill be passed granting an appropriation to the Cumberland road, I have no doubt it would receive his sanction.

Representative Howard thought Representative Parris had mentioned President Monroe's veto message as an authority on the subject:

I think he has misapprehended the meaning. It was not a simple appropriation of money to be applied to the construction of the Cumberland road that was vetoed by Mr. Monroe. It was a bill establishing toll gates on the road, with certain other provisions that would have given to the United States jurisdiction within the States through which it passed, incompatible with sovereignty.

He quoted the veto message, with emphasis on certain phrases:

A power to establish turnpikes with gates and tolls, and to enforce the collection of tolls by penalties, implies a power to adopt and execute a complete system of internal improvement. A right to impose duties to be paid by all persons passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take the land from the proprietor, on a valuation, and to pass laws for the protection of the road from injuries; and if it exist as to one road it exists as to any other, and to as many roads as Congress may think proper to establish. A right to legislate for one of these purposes is a right to legislate for the other. It is a complete right of jurisdiction and sovereignty for all the purposes of internal improvement, and not *merely the right of applying money under the power vested in Congress to make appropriations*, under which *power*, with the consent of the States through which the road passes, the work was originally commenced, and has been so far executed.

He asked if Representative Parris would let President Monroe's view settle the matter. Representative Parris replied, "he would go with Mr. Monroe when he was right."

Representative Howard summarized that response as relying "on these authorities when they are right, not when they are wrong." If he can tell the difference, Representative Howard asked, why take up the House's time reading from the authorities?

President Jackson also had been mentioned:

It is not for me to speak in censure or praise of that extraordinary man. His actions are now in the hands of the historian, and I only refer to him for the benefit of his authority upon this question. In his veto on the Maysville road bill, he cites, evidently with approbation, the opinion of Mr. Monroe, “that Congress have an unlimited power to raise money, and that, in its appropriation, they have a discretionary power, restricted by the duty to appropriate for purposes of common defense and of *general*, not local, *national*, not State, benefit.

Many other presidential actions could be added to these two examples, “for more than the third of a century, all in our favor, and yet we are now met with the argument that Congress has no power to continue this great national work.” These examples reflect the practice of the past, and to substitute theory over practice was to be like the doctor who abandons a medicine that cured thousands because “it was opposed to some preconceived theory.” To the “ultras” on either side, he said, “my ground is that whereon the Government itself must rest – its current, practical exposition of the Constitution by its legislative, executive, and judicial action.”

He had a question for Representative Parris. Why had the general government built a 75-mile macadamized road in Maine? Representative Parris replied it was a military road.

(They were referring to a military road from Matanawcook, where it enters the Penobscot River, to Mars Hill near the northeastern boundary line of Maine with Canada. The initial appropriation for it, \$15,000, was in an Act of May 24, 1828, which directed the President to employ troops as he may think proper to survey and construct the military road. The final appropriation for the road was in a bill for support of the Military Academy at West Point, which President Van Buren signed on July 7, 1838. It included \$364.03 to close out the accounts of Charles Thomas, “being part of an amount heretofore appropriated to the surplus fund.” That amount brought total appropriations for the road to \$137,747.75)

Representative Howard continued:

The answer is quite satisfactory, sir; it is a military road, or rather it is called a military road, and that makes it constitutional. A name is sufficient to dispel all the apprehensions of Federal encroachments! Sir, is there a member in the Hall that doubts as to the true reason why the gentleman is for this “military road?” Shall we voluntarily surrender our common sense, our experience, with respect to the motives and incentives to human conduct?

Representative Parris responded, “I never voted for that road; it is a military road leading to the British, not from them.” Representative Howard retorted:

We are now told that the gentleman never voted for it. And why, sir? Because the question was never submitted to him.

Representative Parris had become a member of the House on May 29, 1838, to fill a seat vacated by the death of the incumbent, after the appropriations for construction were over, except for the small amount mentioned earlier to close an account.

Maine had its military road, but Representative Howard wondered what would happen if the British invaded Maine, and “the chivalry of Indiana should desire to go to her relief, would we stand in no need of a military road?”

Leaving the topic of Maine, Representative Howard pointed out the many harbor, lighthouses, and other activities for which Congress had approved appropriations. He said “it would gratify me to hear from several gentlemen how it is they prove the constitutionality of these works”:

One thing, sir, seems a little remarkable, and that is, that local interests seem to have a wonderful effect in neutralizing these constitutional scruples. How is it, then, that these things come about that gentlemen can vote away millions of treasure on light-houses and harbors, and for constitutional reasons not a dollar to the Cumberland road? Is it the salt water that makes it constitutional to make harbors?

Referring to Representative Hubbard’s “arguments with great force in opposition to this measure,” he asked why it was constitutional for the general government to give his State of Alabama “four or five hundred thousand acres of land to make a canal around the Muscle shoals?”

Representative Hubbard said “he had not voted for that measure, and would be willing now to give the land back to the Government.”

Representative Howard said that he hoped Representative Hubbard would remain in the House for many years, if he wished to do so, “but I can tell him it will be for some other reason that they will send him here than for his opinions on this subject.” (Representative Hubbard remained in Congress through the 31st Congress ending in March 1851.)

Representative Reuben Chapman, a Democrat from Alabama, asked if Indiana had received similar grants of land.

“Certainly,” replied Representative Howard. He did not object to liberal grants to the new States; had he been in Congress at the time, he would have voted for them, “whether for Indiana or Alabama, and I should not now mention them if it were not to show how the *locality* of a measure may sometimes influence the conduct of a gentleman here.”

He summed up the reason for his look at projects around the country:

Now, sir, in all seriousness, look at your line of sea-coast, your harbors, light-houses, upon which millions upon millions have been expended. Look at your roads, too, in various sections of the country, some finished and others in

progress, and tell me what becomes of the argument against the power to prosecute this greatest of all our national works – a thoroughfare which, let politicians talk as they may, and resist it as they will, is destined to be carried to the foot of the Rocky mountains, and *through them*, if it cannot be constructed over them, and to terminate at some great mart on the Pacific, from whence our trade will be carried on with the West Indies, not Cuba, Jamaica, &c., but the *West Indies*. We hear the Cumberland road spoken of as a *local* measure. Sir, it is the commencement not of an Appian or Æmilian way, but of a prouder monument; one that is to connect two oceans; that even now embraces “in its ample span” almost half a continent. Yes, sir, oppose it as you please, but American money, American genius, and American enterprise, will carry it forward, and it will be traveled by the Representatives from the States of the Oregon, if the spirits of disorder and disunion shall not rend us asunder, and defeat that destiny which, as a united people, awaits us. It will not be a canal, frozen up in winter, nor a railway . . . but a paved highway, over which our armies may march, our munitions of war be transported from one side of this vast continent to the other.

(The Roman consul, M. Aemilius Lepidus, built Æmilian Way during the war against the Gauls in 187 B.C. It stretched about 180 miles from Rimini to Piacenza. Built as straight as could be, the road was completed by the time the war ended. [Von Hagen, Victor W., *Roman Roads*, The World Publishing Company, 1966])

Nearing the end of his speech, Representative Howard spoke of the value of the Cumberland Road:

Sir, our children will look with pride upon this work, and boast that it was the work of their fathers. I, sir, would be among the last to do violence to the Constitution; but both the instrument and its construction have been given to us by the statesmen who have passed away; and shall we now cease to make it that beneficial instrument which, for an age, the action of the Government has made it?

Indiana residents had expended some \$200,000 “in the purchase of quarter and half quarter sections, in order to provide themselves farms upon and near the National road.” They did so because they “all believed, it was on every man’s lips, that the United States were to make a great national highway there.” Based on their faith in this promise, they had bought the land and thereby “poured the proceeds of their hard earnings into the Treasury”:

They looked to it as a thoroughfare for emigration, for commerce; and hence population has crowded upon it, cities have sprung up along its line, some of ten thousand, some of fifteen thousand inhabitants, on the finished parts of the work. Will you now, sir, check it, and leave the people in Ohio, Indiana, Illinois, and Missouri, to charge the Government with bad faith?

Sir, the road is worse in some parts of Indiana than if there had never been a

stroke struck upon it; patches of the graduation completed; a few miles of paving done in the vicinity of three towns; and the rest left worse than when it was in a forest. What will the people *say*, what will they *think*, of the policy of a Government, of its wisdom, and its *faith*, if this work shall be abandoned.

He had, indeed, told his constituents that Congress would provide an appropriation to continue the work. He did so because he thought Whigs and Democrats “would unite in preserving the national faith.” He did not look to political parties, but to friends of the road, of all parties. “I would appeal to the gentleman from South Carolina, especially to one now in my eye, a native of the same neighborhood with myself, whether they think there is nothing in the just expectations of the western people on this subject.”

He concluded:

Mr. Speaker, it has been asked whether we were to be bought by this appropriation? Sir, it implies an injurious imputation. It is true we have our price; but it does not consist of political or party considerations, nor is it dollar and cents. It is the price of patriotism; of virtue Contemplate the progress of empire westward – the millions that are to fill up that vast region, possessing facilities unequalled on the globe. Sir, the scepter will depart from Judah. Is it not better for you to do us justice than to allow us to redress our own grievances, smarting under the sense of the illiberal, narrow policy of the old States toward us. Do gentlemen suppose we will be unmindful of our friends?

Representative Pickens presented substitute language asking the committee to inquire into the propriety and expediency of making an appropriation for the continuation of the Cumberland road.” At his request, the House adjourned before he could explain his motion.

The first order of business on February 13 was Representative Casey’s motion regarding the memorial of the National Road Convention. Referring to Whig Representative Hoffman, Representative Pickens – a former Nullifier who was now a Democrat – said he had listened “with great pleasure, to the eloquent gentleman from New York – an ornament to his great and noble city.” However, he regretted “some of the partisan remarks in which the gentleman thought proper to indulge.” He would not stoop to party discussion, “not even stop to pluck the barbed arrow from the sides of the Executive, even though it should be shot from the ‘loud-twanging bow’ of Achilles himself.” He had a higher object in view, namely that the Constitution would “be raised from the dust and ashes, where it has been too long trampled upon, and made the sport of party and party interests.”

This moment in history was unique because “we have a fair opportunity of placing the Government of our country on a true republican tack.” Until this moment, the country had been involved in “great interests, which rendered it next to impossible that we could place the Government where the framers of the Constitution intended it to be; and in the present juncture of our affairs – *with no national debt* – with a system of taxation approaching to free trade, and a reasonable hope of peace, there can be no reason, no

pretext, why we should not set upon this great work at once, and start the Government upon those just and forbearing principles, compatible with the genius of our institutions, and which alone can give quiet and *permanent union* to a turbulent and excitable people.”

He wasn’t opposed to the Cumberland Road or the interests of the four States involved, but said “it involves great and vital principles; vital to the Constitution; vital to the purity of this Government and the union of these States.”

He also opposed Representative Casey’s motion because it might serve as a precedent “which is hereafter held up and quoted, as it was quoted yesterday by the gentleman from Indiana, [Mr. Howard,] in his eloquent speech, as a precedent for future Congresses – a precedent which, in my judgment, rides over the Constitution, and transfers to the majority on this floor the power to make the Constitution what they may suppose that their interests call upon them to make it.”

Before turning to constitutional issues, he wanted to address comments by Representative Mason “who placed the obligation to make this appropriation on the ground of a specific contract”:

He placed the matter on a special contract, and, with great parliamentary courtesy, proclaimed that those who differed from him upon this subject were “ignorant, narrow, contracted”

Representative Pickens wanted to examine whether “there is a special trust . . . and that we are made a trustee under those acts.” If the funds specified by the trust are exhausted, then “I humbly submit to the gentleman that his special contract, must of necessity, fall to the ground.”

He went through the legislative history, dating to the Enabling Act of 1802 for Ohio statehood, to track the trust fund of two-percent revenue – which he said “had been *exhausted more than five times over.*” The 5-percent road trust fund totaled \$2,432,445.48, while the 2-percent portion for roads “to” the four States came to \$972,978.20. “This, then, is the whole of the *trust fund*, so far as the land is sold.” As of December 1837, the aggregate amount appropriated for the Cumberland Road came to \$6,318,739.82. The difference between the total of the 2-percent fund and total appropriations was \$5,345,761.62. Meanwhile, the latest estimate was that completing the work would raise the total cost to \$7,896,045.44:

With what face, then, can gentlemen now call upon us to appropriate again at this time, \$450,000, and claim it as due from the trust fund? It cannot be maintained.

Next he attempted to calculate the income from the remaining 62,399,899.38 acres to be sold in the four States. He estimated that the 5-percent road trust fund from the sale of this acreage would come to less than \$3,100,000, “which, taken from the \$5,245,761.62 [sic] already in excess, will still leave a balance in favor of this Government of \$2,245,761.62:

Judging from the past, however, it may be safely calculated that the public lands to be sold, will not yield half the sum estimated above, which, of course, would reduce the five per cent. estimate in like manner. Thus, I trust, I have forever put to rest this flimsy pretext, as to the famous *two per cent. fund*; and that no one will ever again urge upon us this appropriation from the obligations of a special contract.

He asked:

Do you suppose that the men who, in the years 1802, 1803, and 1806, passed the first acts to which I have referred, could have contemplated that \$6,000,000 were to be drawn from the Treasury in the short space of thirty-three years for this object? They would have hesitated long before they would have set a precedent which is now appealed to as having the authority of law.

He also commented on the estimate he had cited:

And it is to be remembered that the sum of \$7,800,000 here mentioned, is only the estimate. We all know the character of these estimates – that they are the mere theoretical estimates of gentlemen in their bureaus; but come to the actual amount and you will find it to be nearer sixteen millions than eight; for, in every such estimate, the amounts actually called for exceed almost double the amount first estimated.

As for himself, Representative Pickens said that “rather than to be harassed, here year after year,” for appropriations for the Cumberland Road, he would prefer “if we are to be compelled to carry on the work,” to give each of the States “five out of every one hundred and five sections of land unsold for their own disposal, provided we were never to be asked for an appropriation again on this subject.”

Representative Pickens continued:

Well may the gentleman from Indiana [Mr. Howard] speak of this as a magnificent enterprise. Well may the gentleman from New York [Mr. Hoffman] call it the Appian way. It may be the Appian way; it may be a magnificent enterprise – *but who is to pay for it?* Is it an enterprise within the provisions of the Constitution? Is it an enterprise within the limits of a republican and economical Government, involving, as it does, in all human probability, appropriations to the amount of twenty or thirty millions of dollars? And if the gentleman from Indiana is right in the bright prospects which he drew of the future; if that road is finally to lead, as he says, to the shores of the Pacific, then *two hundred millions* of dollars will not cover the expenditures. And this is the species of argument which is employed to induce a republican Government to adopt measures that are to involve the country in such enormous extravagance!

It may be an Appian way, as the gentleman from New York says, but I would remind him that the Appian way which led from Rome to Brundisium, became

the great highway of emperors who marched along it, waving *imperial eagles over prostrate slaves and an oppressed and ruined country*. Is the Appian way to be cited here as an example to us? First go and make your Government as splendid and despotic as that of imperial Rome became in the progress of time. What was it that broke down republican Rome? It was this very system of partial, unjust, and corrupting legislation; a system in which conquering generals brought back spoils from sacked cities and devastated provinces, to be divided among “*Roman citizens*,” and to pamper an *arrogant and agrarian people*.

You may make this Appian way – you may make this great Government road, but it will be a road that will pass through the very vitals of the Constitution. I say, you may make such a road; you may make another in the South, and another in the North, and you may call them by what names you choose; but rest assured that the principle upon which you act strikes at that equal justice which should ever be the basis of a republic.

The only way to preserve a republic of 26 independent States was to dispense “equal burdens and equal favors.” If his colleagues thought the opposition to the measure was based on sectional prejudice, they do an injustice “to the people of that persecuted region which stretches from the Patapsco to the Mississippi, and which has been denounced as particularly sectional in its views of public policy”:

In taking the ground which they have taken in opposition to such measures, they have planted themselves on the great principle of the Constitution, and sound national policy. They ask that your Government shall be equal. They do not come and ask at your hands favor or bounty; they ask for a Government that may be *just and forbearing* in peace, so that it may be strong in war, because strong in the affections of a devoted and loyal people Yet we are denounced as sectional because southern interests are spoken of. But let us reflect what those southern interests are. All that we ask is a strict construction of the Constitution as it regards all portions of the Union, and that the local interests of all may remain untouched by Federal legislation.

He hoped that view was not unique to the southern States, but was shared by all the States:

. . . but I tell the gentleman from Indiana, that the speech which he has made on this occasion will hereafter be held up to him as containing doctrines by which it is proposed to set up precedents as law; and, in his own language, the mere “beaten track of legislation” as the Constitution of the land To say the least of it, sir, the gentleman can never again lay claim to the title of a strict constructionist.

Representative Pickens wanted to know what Representative Howard meant when he spoke of making this a National Government:

If by the term he means that discretion which would give a majority in Congress

the right and power, under the broad shield of “the general welfare,” to which he had alluded, to make *appropriations of money* for any and every object that a majority may decide to be within the scope of the general welfare, then it is precisely the doctrine of Alexander Hamilton, and comes within the range of those vast constructive powers advanced by Chief Justice Marshall – a man whose name is never to be mentioned save in profound respect and veneration for the purity of his character, and the simple dignity and power of his intellect.

Representative Pickens discussed the meaning of the term “general welfare,” which was mentioned twice in the Constitution. He quoted the preamble:

“We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare,” &c.

He also quoted the reference that was usually the subject of debate:

“Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States.”

He explained his interpretation of the phrase:

It is very clear that the term . . . was designed as a mere declaration of extreme caution, and that the true intent and meaning of those who use it was, that it should be a limitation to the apparently absolute and uncontrolled power given in the same clause “to lay and collect taxes;” that they should not use this power wantonly or in caprice, but should strictly consult the “general welfare,” and carry out the same only by confining its full exercise to objects specially enumerated in that instrument, which are thereby declared to be *national*; that it was not intended to apply to sectional objects or local interests in any particular State, but to those great national objects which were specially declared by grants of power to be within the jurisdiction of the Government.

He also addressed the claim of power to make internal improvements from the phrase “to regulate commerce with foreign nations, and among the several States, and with Indian tribes.” He conceded that on first glance, the phrase “would seem to be a general and absolute grant of power; but when we reflect as to its nature, we find it is not such.” It actually was a limitation upon the government’s power to interfere with the “free and unrestricted commerce between the States”:

It does not say that Congress shall have power to regulate commerce, but “commerce *with foreign nations*.”

Similarly, the phrase “and among the several States” might seem “absolute and uncontrolled”:

. . . but that is not the fact; for I will demonstrate that the instrument itself has two express limitations upon this very power. First, in section 9, it is said, “no tax or duty shall be laid on articles exported from any State,” and “no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.”

In short, this language, that implied unlimited power is the opposite, “a restricted and limited power.” The “wisdom of the instrument” can be understood only by reading all the parts. It limited the power of the general government, “in favor of perfect freedom in trade, and running in the same spirit with that clause which declares that ‘the citizens of each State be entitled to all the privileges and immunities of citizens in the several States.’”

As an example, he explained:

If a State were to monopolize, as a State, any branch of trade, so as to appropriate it to herself under restrictions operating upon others, then Congress would have power to regulate such “commerce.” For instance, if Virginia were to monopolize for herself the tobacco trade, or if Pennsylvania were to monopolize coal mines, and control their exportations, then the power of Congress would attach.

Commerce, as a public matter between State and State, might be regulated, but trade private, between individual and individual, was to be beyond the interference of Congress. Yet, under this general power, having a plain and palpable object, it is claimed to create works of internal improvement Under the power to “*regulate*” one thing, you claim the power to *create* another

To demand that Government shall create internal improvements, and force commerce upon them, under the power to regulate commerce, is the same thing as to claim that Government shall build our steamboats and ships to transport our produce across the Atlantic. If you can do the thing in one case, you can in the other.

Representative Pickens thought the day had passed when such an argument had weight, as illustrated by the Cumberland Road. Those who projected the Cumberland Road had two reasons: “The first was, to promote commerce between the States – to promote union and intercourse; the second was, national defense, and the protection of our remote and frontier settlements, which were subject to imminent danger”:

Now, I submit to gentlemen, whether the circumstances of the country are not so entirely changed as to render these great intentions no longer of weight.

The western territories and States were surrounded by hostile Indians and “imminent danger of invasion from Great Britain.” The new western States looked to the old eastern States for help. That was, however, no longer the case. The western country had

“now sprung up into national existence,” with the Indian threat neutralized and Great Britain no longer a threat:

And for them now to come and claim an appropriation, under the original objects of the first grant, reminds me of a full-grown boy, just stepping into manhood, with ruddy cheeks and joyous eye, asking to be dandled on his mother’s knee, and whining to draw milk from mother’s exhausted breast. Such is the state of things.

Steam power, he said, had “given life and wealth and greatness to a slumbering wilderness.” It had “changed the whole commerce of the West; which had brought into existence, as it were, a nation from the wilderness, and quickened it with sudden life and vigor”:

Sir, you might as well attempt to bind down the lion in his strength by throwing cobwebs over his mane, as to cripple the energies of the West. The journey from Pittsburg to New Orleans may be performed in as many days, under the operation of the steam-power, as, in 1806, it took months. And yet the appropriation is claimed to facilitate commerce.

He pointed out the commercial value of the Ohio River running parallel to the Cumberland Road in the States west of Wheeling, and the inland seas furnishing “the finest commercial intercourse of any inland country upon the face of the globe.” He

asked:

What more can be done? The puny efforts of this Government sink into contempt before the majestic works that nature herself has thrown around this magnificent country.

He summed up his point:

If the Congress of 1806 had good inducements to make these appropriations, the Congress of 1840 have none, and it is the height of folly and of madness to continue to make appropriations originally based on a different state of circumstances in the country, when the whole country itself has changed.

Having addressed the constitutional issue, he turned to the fiscal question. Based on projections of revenue and needs, “we will be barely able to meet just demands upon the Treasury”:

Now, I put it to those who have rallied themselves upon the late able message of the President in favor of economy and retrenchment; I put it to them whether it is proper, under the existing circumstances and embarrassments of the country, to vote an appropriation of *four hundred and fifty thousand dollars* for this road? I put it to them whether it is proper to vote this amount, with the certainty that you must either borrow money or issue Treasury notes? It is reported that there is

universal derangement, a general pressure, in the money market, from one end of the country to the other; and I take it for granted that the idea is not to be entertained that the Government is to borrow money to meet its exigencies

The Government has undoubtedly a right to borrow, and to use the form of Treasury notes instead of bonds. But when gentlemen come and ask me to *vote four hundred and fifty thousand dollars* for an object which I believe to be beyond the Constitution, and unnecessary, and with the certainty that, according to the *estimates on our table*, we will be called upon to appropriate nearly eight millions more to the same object, I, for one, raise my protest against it

If they expect him to vote for such a measure, “I will trample upon the ties of party with contempt, and refuse my vote.”

The debate had raised his anger:

Sir, I confess that some of the remarks which fell from the able gentleman from Indiana [Mr. Howard] made my blood run warm. I confess that I felt a deeper emotion of the heart when he spoke of the rising strength of the West – of the numbers they would include under the next census; when he spoke of their power and ascendancy; and when he said that they would remember their friends, and visit their enemies.” Sir, this remark of the gentleman may have been full of Christian charity and forgiveness, but if it was, it created different feelings in my bosom Sir, I know not how I am to be visited. I know not whether I am to be viewed as a friend or enemy; but I know my duty to the Constitution; I know my devotion to the great interests of the country – not to the interests of a particular section, or of a few States – but to the interests of the whole country; and, knowing my duty, the language of the gentleman has neither terror nor temptation for me.

Representative Howard had asked why appropriations were constitutional on the Atlantic side of the mountains, but not to their west. Representative Pickens was not sure what appropriations were being cited, but if Representative Howard meant the harbors bills, “by which Congress has appropriated money under the power to regulate commerce, I hold all such to be against the genius of the Constitution, a gross and profligate perversion”:

It is a fraudulent perversion of the internal improvement power to make such appropriations under a bill nominally for harbors. Since the famous veto of the Maysville road bill, appropriations for internal improvement have taken that direction; but if true intention is to protect and “regulate” our commerce, where commerce exists, then such objects come directly within the provision of the Constitution, which declares that “Congress shall have power to regulate commerce with foreign nations.”

He objected to the “perversion of this power.”

He wanted to dispel any notion that he had a particular objection to the appropriation for the Cumberland Road. He had no special objection to the road or the States through which it passed. “The only feeling I have towards it is, that it is connected with a system of measures – with a precedent, which is hereafter to be quoted, as it now is, as being a part of the Constitution – a precedent, upon the strength of which eight millions of dollars are hereafter to be asked, and probably eight millions upon that.” It was part of a pattern he opposed:

Rather than be harassed year after year – rather than have the whole system of corrupting patronage which is connected with the public lands, through public agencies of all kinds, remain as it now is – rather than see such power and patronage wielded under executive influence and dictation, I will vote to cede the public lands to the States in which they lie, on certain conditions, reserving a portion of the net proceeds, at least equal to what they have yielded us heretofore, and let the States incur the expense of sales, &c., and control all the patronage incident to their management – the minimum price to be fixed by this Government.

In closing, Representative Pickens said:

Mr. Speaker, as to the instructions moved upon your table, ordering positively the Committee of Ways and Means to bring in a bill appropriating \$450,000 for this road, I have only to say, that if they are carried, it will change the mode and manner of doing business in this House. You will have instructions moved upon all other sectional subjects, and the consequence will be, we shall be forced into a vote upon propositions which ought to be moved first in Committee of the Whole. I have moved my amendment with a view to allow the committee merely to inquire into the expediency of reporting a bill. And if my amendment prevails over the positive instructions, then I can vote against the proposition even as amended. This course is perfectly parliamentary. It is a mere matter of expediency, and does not commit me to anything except a preference of mine over positive instructions. I shall vote, finally, against all instructions.

Having concluded his remarks, Representative Pickens moved the following amendment:

And that the memorial be committed to the Committee of Ways and Means, with instructions to consider the expediency of reporting a bill in favor of the measure.

(Although Representative Pickens played a key role in the 1840 debate about the Cumberland Road, he is best known to history for his role before and during the Civil War. He was a wealthy land owner who, as of the 1860 census, owned 276 slaves. He served in the House until March 1843. After a stint as U.S. Minister to Russia under President Buchanan (January 11, 1858–September 9, 1860), he returned as Governor of South Carolina (December 14, 1860–December 17, 1862). As Governor, he oversaw the secession of his State from the Union and ordered the bombardment of Fort Sumter that launched the divided country into the war. After the war, as a member of the State constitutional convention in 1865, he introduced the line that brought the State back into

the Union: "We, the Delegates of the People of the State of South Carolina, in General Convention met, do Ordain: that the ordinance passed in convention, 20 December 1860, withdrawing this State from the Federal Union, be and the same is hereby repealed.")

Representative Proffitt, an Indiana Whig, took the floor. He favored the Casey Amendment and opposed the Pickens Amendment "because, he said, it evaded the question; and if referred to the committee in that form, it would never be reported upon." In any event, he said the committee "would not report a bill without having before it estimates" from the appropriate department. "He censured the Department of the Treasury for omitting the Cumberland road in the estimates, and contended that it was done intentionally." He then launched into the real purpose of his speech. He criticized the Van Buren Administration's land policies, war in Florida, and other reasons, before challenging the military career of General William Henry Harrison and his claims as a Whig to the office of President.

New York Representative Marvin, a Whig from New York, offered a substitute for the Pickens Amendment:

And that the Committee of Ways and Means be instructed to report bills in accordance with the estimates contained in the reports of the Chief Engineer and the Chief of the Topographical Engineers, to the Secretary of War, and communicated to Congress by the President, making appropriations for the year 1840, for the continuation of the construction or improvements of harbors and roads, and the navigation of rivers, for which appropriations have been heretofore made.

His point was that the Committee of Ways and Means "should discharge a duty which it had done at every previous session of Congress":

Until the last session, it had been in the habit of reporting bills for the Cumberland road, and for constructing harbors and building light-houses; but it had refused at that time to take the responsibility; and if it be left to them at this time, as a mere question of expediency or propriety, the House would never hear of the matter again. The committee was so constructed, that it would control the subject, and entirely keep it from before the House to carry out its views.

He thought it "more than idle to pass upon any proposition simply to ask the committee to inquire into the propriety of reporting an appropriation for this road." In contrast with Representative Pickens, Representative Marvin "contended that it was perfectly constitutional for the General Government to carry on works of internal improvement."

Representative Daniel D. Barnard, also a Whig from New York, asked his colleague to accept a modification of his amendment to follow at the end:

Unless, in any particular case, the committee should be of opinion that the particular work ought to be entirely discontinued; and in such case, if any, the committee shall submit to this House the reason which lead to such conclusions.

Although he wanted to speak on the subject, an unrelated matter came up, after which the House adjourned.

He had the opportunity on February 14 when, again, the order of the day was the motion by Representative Casey regarding the resolution of the National Road Convention. This time, however, the amendments by Representatives Pickens and Marvin were part of the debate.

Representative Barnard explained why he introduced the amendment to the Marvin Amendment. He said “the proposition before the House was general, and embraced the whole system of internal improvements, which have been under the fostering care of the Government for many years.” He did not want the issue to be about party although as a Whig, he knew it was hard to divorce party entirely from the question:

The question was one of a great national party policy – it was whether it be not the duty of Government to provide, by all the means in its power, and that it commanded, for the construction and repair of roads, of national and military importance; for construction and improvement of harbors, and removal of obstructions from navigable rivers for the good of commerce.

He considered it of “the utmost importance” for the general government to pursue such projects:

The system of internal improvements to which he had referred was one commenced long ago, and was prosecuted by the power and agency of the Government for a long series of years, and there was nothing new or unusual in it – it was one which had commanded the favor of every President of the United States, every Administration of Government, every party in power, and every party of any considerable standing which expected to get into power, since the system was first introduced. It had met, certainly, with personal and partial opposition; but he believed if there was any one system of policy which might be considered as established by the Government, it was this one.

Now, for the time, it was suspended and placed in jeopardy. As far as the President and his Cabinet were concerned, it was abandoned. Revenue from the sale of public lands and duties on imposts was needed for other purposes, leaving “nothing for objects of internal improvement.” Judging from President Van Buren’s annual message, any idea of increasing the tariff was “so entirely [out] of the question, that it is not to be regarded for a moment as the ultimate source from which the great system could derive means for its support.” The tariff, as he stated, had been set by the Compromise of 1833 through 1844:

The National road, harbors, all the great objects of the past care of the Government, were to be sacrificed to the genius of the compromise act. Thus, sir, we have a new rule set up, by which the action of the Government should be measured. The question hereafter would be no longer what the interests of the

Government required, but whether the 20 per cent. *ad valorem* would admit of carrying out any measure that might be for its interest.

A political alliance had been formed between the head of the present Administration and a distinguished individual, the great champion of the compromise act. The first effect of that alliance was the total abandonment of the system of internal improvements. He begged leave, for one, to enter his solemn dissent, and upon his official responsibility, to the whole doctrine which belonged to the assumption, on the part of the President of the United States, that this compromise could not be touched. He did not believe that it was superior to the Constitution, and could not be disturbed, though he was not, at present, willing that it should be disturbed.

If the system were suspended, “the greater part of the money already expended would be as completely lost as if it had been sunk in the ocean. A great enterprise was to be broken off, half executed; and the part of the road completed would be of no sort of value.”

Referring to improvement of the Hudson River in his home State, Representative Barnard said that if the House would agree to complete that work, but abandon all other internal improvements, “he would, on behalf of his constituents, reject the proffer.” He was for “the whole system, which was a glorious one, and would never consent to abandon it to benefit a particular part of it.”

He believed that revenue from the sale of public land should be used for internal improvements. “The money expended on objects of internal improvement, he thought, would be reimbursed to the Government, eventually, through the means of the general benefits which it would confer on the country in developing its resources.”

It was “absolutely necessary” for the House to instruct the Committee of Ways and Means to report on the issue. Otherwise, he concluded, “he did not believe it would report one single bill for objects of internal improvement.”

Representative Isaac E. Crary, a Democrat from Michigan, began by commenting on the Marvin Amendment, particularly its proposed appropriation for harbor and river projects:

I am aware that it has become a common custom to examine nearly all questions that come before us with reference to constitutional considerations. It is not to be supposed, however, that the most rigid constructionist will call in question the power of the House to give efficiency to the amendment offered by the gentleman from New York, [Mr. Marvin.]

There was no question that the general government has jurisdiction over most of the country’s navigable waters. They were “the common highways of the whole Union:”

The United States have the jurisdiction over them, and have the right to improve their navigation. This improvement cannot be made by the States if by such

improvement those waters are deprived of their character of “common highways.”

The only question, then, Mr. Speaker, for our consideration, is, whether these improvements are necessary, and appropriations at the present time expedient.

I was aware that the system had been charged with “numberless abuses.” They should be corrected. “But until they are pointed out, I am disposed to vote the appropriations, believing them necessary to give protection to the rich and increasing commerce of the West.”

He pointed out that the frequent “cry of extravagance is without foundation.” Prices had gone up over the years “by reason of the great rise in prices, and the universal demand for labor.” Projects were now being “made more permanent than was originally contemplated.” For example, instead of building bridge piers of wood, “that must soon decay by the action of the elements,” they were being built of stone, “which often had to be transported from a distance.” He continued:

But the greatest cause of the excess of the expenditures over the estimates, is traceable to the action of this body. During our long sessions, we have been in the habit of delaying the appropriations to so late a period in the season that contracts for labor and material could not be made to advantage. It often happened that works were suspended for six months in the year, awaiting the tardy and uncertain action of Congress; and were then recommenced in the midst of the summer months. This left only about three months for active operations, two of these the most unhealthy of the year, and the other a month of storms and tempests. Under such a system of appropriations, there must be waste and extravagance; but the fault was with the makers of the laws, and not with those who executed them.

These problems were particularly evident in northern climates, such as Michigan. He illustrated his points by discussing the value of the expenditures for harbor improvements on Lakes Erie and Michigan:

It has been by means of the harbor improvements on the lakes that the whole of the public domain in the Northwest has been brought into market. When this system was commenced, the State that I have the honor to represent was supposed to be a bleak and barren wilderness – “a country of sand hills, sometimes crowned with a few stunted trees and a scanty vegetation, but generally bare, and thrown by the wind into a thousand fantastic shapes” – a country unfit for cultivation, and so filled up with marshes that enough of good land could not be found to supply the demands of the soldiers of the war of 1812. Such was Michigan, even after the close of that war; but its whole aspect has been changed by the expenditures of a few thousand dollars in harbor improvements.

(The quote was from Morse's Traveller's Guide, Or, Pocket Gazetteer of the United States in 1826.)

He commented on Representative Pickens' idea that improvements in the northern States were not needed for the common defense. "He thinks that all our future battles are to be fought upon the Atlantic." He was mistaken, Representative Crary said, that "if we had a war with Great Britain, the battles would be fought on the ocean, or that the Atlantic cities would be the only points attacked by the enemy." Great Britain, he suggested, would not invade East Coast cities. Instead, battles would be fought on the lakes between the United States and Canada. Already, Great Britain was pouring troops into Canada, and adding fortifications, to enable a strike against the United States "in our weakest point."

He also disagreed with assertions that President Van Buren was opposed to appropriations for harbor improvements. The fact that the Department of the Treasury did not include estimates in its report accompanying his annual message to Congress was not evidence of the assertion. His proof was in dates:

When his message, together with the report from the Treasury Department, was transmitted to this body, the operations of the Topographical bureau and Engineer corps, for the year 1839, had not been laid before the head of the War Department. Directions had been given that all our public works should be inspected by competent officers, and the result of their labors were not communicated until the 7th of January. The bureau of Topographical Engineers reported on the 30th of December, 1839, and the Chief Engineer on the 7th of January, 1840. On the 8th of January these reports were laid before the President, and on the 9th of the same month he transmitted the same to Congress "for their action and consideration."

The report from Colonel Totten dated January 7, 1840, included estimates required to complete civil works under charge of the Engineer Department, as well as estimates for work required in 1840. For the Cumberland Road, the amounts were:

State	Estimate for Completion	Amount Required for 1840
Ohio	\$638,166.26	\$100,000.00
Indiana	\$3,144,250.20	\$150,000.00
Illinois	\$1,432,138.49	\$150,000.00

[*Message from the President of the United States Showing the Operations of the Topographical Bureau during the year 1839, United States Senate, 26th Congress, 1st Session, Doc. No. 58*]

Representative Crary emphasized that last phrase:

Does it indicate a spirit of hostility either to the Cumberland road or to harbors?
As the particular friend of the latter, I am glad of such opposition. It will do more

than has ever yet been done to induce the country to urge these works to completion.

Those of the Opposition who are friendly to these improvements are doing the President great injustice. He has sent to us the best report that ever came from the head of the Executive, and yet they are dissatisfied because the estimates were not to be found in the annual report from the Treasury. They are not there, because they were not completed when the Treasury document was made out. But they are before us now, and with the sanction of the President. What more do gentlemen want? What more would they have?

But no; the President can do nothing that will satisfy them. If he includes the estimate for such works in the annual budget, he is forthwith charged with recommending extravagance, and with wishing to extend executive patronage. If they are omitted in the budget and sent up by the proper Departments, according to the practice of the Departments, then comes the cry of opposition to all improvements. Sir, the spirit of opposition to this Administration rides over the best interests of the country.

Changing subjects, he said:

It must be well known to every member of the House that the expenditures of Government are in a great degree confined to the Atlantic States The great body of our legislation has been for the immediate benefit of these States. Congress seldom looks westward, except when some question in regard to the public domain is under consideration.

Despite the imbalance, he was disposed to vote liberal supplies for defense to support the Army and Navy along the coast:

Will the Atlantic States be actuated by a similar liberality? When the West brings forward objects for which expenditures are expedient, will those States give to them a consideration commensurate to their importance?

If not, the consequences were predictable:

There is glory in belonging to the Union; there is a feeling of pride in its associations. But all these may pass away, by the infliction of burdens grievous to be borne, by forcing one section to become hewers of wood and drawers of water in support of a Government established "to provide for the common defense, and promote the general welfare." Sir, this is not spoken in a fault-finding spirit. I am not to be thus misunderstood. But it is to be borne in mind that the West has contributed more than its full share to the funds of the Treasury; and in asking that a portion of these funds be returned to them, and expended on constitutional objects, they are governed by a sense of justice, and a desire for "a more perfect union."

After Representative Crary concluded his remarks on unrelated matters, the House adjourned.

On February 15, the order of the day was, again, the motion introduced by Representative Casey and the two proposed amendments to the motion. However, the following debate as reported in the *Globe* was on other matters, such as the pending census. Representative Patrick G. Goode, a Virginia Whig, did briefly discuss the Cumberland Road. After citing the history of the road and its support by President Jefferson and his successors, he “argued that the faith of the Government was pledged to the completion of the work, and that if an appropriation be not now made, great loss will accrue to the Government in waste of materials already purchased, and dilapidation of bridges half finished.”

The Committee of Ways and Means could not bring in a bill “because no estimates were before it,” prompting friends of the project to take some steps to bring the road into the committee’s jurisdiction:

He thought there could be no fairer way to do so than to instruct it to report a bill. If the emptiness of the Treasury was the reason why it had not been included in the estimates by the Departments, he thought it due to the House and the country that the President should have informed them of that fact. He went on to show that the Cumberland road had received the fostering care of the Government when the Treasury was in a more exhausted condition than it now is, and when a heavy debt was hanging over the nation. He believed the President had evaded the question intentionally, and that any effort to cut the Government loose from this road, would be tantamount to the separation of the Government from the interests of the people.

Representative Casey’s motion was once again the question before the House on February 17 after discussion of other matters. However, Representative Thomas Corwin, a Whig from Ohio, was the only person to discuss the Cumberland Road. He addressed Representative Pickens’s discussion of the constitutional issues involved. He reminded his colleagues of Representative Pickens’s objection to the passage of any bill appropriating funds for the road:

That gentleman, he said, had congratulated himself and the country, that the Constitution, which had been administered in such a way that it was entirely different from what it was intended by its framers, was about to be restored to its purity. If that gentleman’s position was correct, he conceived it very unfortunate and most extraordinary that the framers of that instrument had committed such gross errors in expounding and administering it for so many years; for he believed that Washington and his cabinet, and Madison, Jefferson, and Monroe, as would be seen from their recorded opinions, were in favor of this road, and conceived it perfectly constitutional.

Representative Corwin argued “at great length” to demonstrate that a contract existed between the general government and the States for completion of the road, “and that the contract had not been complied with on the part of the Government”:

No one could deny, or dared deny, that the agreement did exist, which was all the friends of the measure wanted – and unless the opponents could show that the contracting parties had no right, under the Constitution, to make the agreement, it was obligatory on the part of the General Government to fulfil its provisions to the letter, by constructing this road to and through the State of Ohio.

The States, after all, had given up 122,000,000 acres of land they could have taxed, “a right which Mr. Gallatin said they possessed, not only to tax land sold by the Government, but also that remaining unsold.” The four sovereign States gave up the right for 5 years:

He wished the State Rights party to remember this when they compared these States to mendicants at the National Treasury, because they demanded a fulfilment of the obligations of the agreement. Mr. C. maintained that the Cumberland road was a great national and military road and commercial highway; and that the same reasons existed for the continuation of it now, as there did when it was commenced, as a means of defence of the Western frontier

The State sought the appropriation, not as a matter of favor, but “on the ground of justice and right.”

He showed that progress could be curtailed, if the “low state of the Treasury” were the issue, to keep the expenditures within the gross amount of estimates.

After an unrelated discussion, the day was nearing an end, but some members wanted to end the debate on the subject of the Cumberland Road that evening. The feeling was that if they did not resolve the matter on this date, it could drag on for weeks. Representative Casey had a suggestion:

The original proposition as to the instructions was offered by himself. So far as he was concerned, he was willing to forego the desire he felt to address the House; and he believed that he might say for a number of the friends of the measure, that they were willing and anxious to take the question this evening. Other subjects would come up, on which gentlemen might have an opportunity to express their views on all the various matters which had been brought into the discussion; and in order that the subject before the House might be referred to the committee, (if it was the pleasure of the House so to do,) and that the committee might act upon it, he hoped the question might be taken this evening.

Representative John Bell, a Whig from Tennessee (and a former Speaker of the House, June 2, 1834, to March 4, 1835), said he would oppose the motion as he always had opposed it, on the grounds of its inexpediency, and not on constitutional grounds, which, in his opinion, were untenable.” Appropriations for the Cumberland Road were “as

much in accordance with the Constitution as those for harbors, light-houses, &c. on the sea coast, and therefore the most successful mode of attacking this measure would be on the grounds of its inexpediency, and not of its unconstitutionality.”

He recalled that Representative Pickens had claimed that “such a crisis had arrived in our national affairs, that it was possible to bring back the Government to its original purity.” If that were true, Representative Bell said, he would be willing to cut off “these enormous appropriations not sanctioned by the spirit of the Constitution . . . and do all in his power to stay the tide of extravagance and profusion of expenditure that had, for some years past, been running so strongly.”

But was the country really at such a point? Representative Pickens had asserted that it was, but “did not dwell upon the evidence which was so satisfactory to his mind, that this happy state of things had arrived.” He did not suggest that the Republican party of the South “now occupied the vantage ground, which would enable them to control the action of this Government with regard to a more economical administration of its affairs.”

Allusion had been made in the course of debate to the state of the Treasury, “an argument that had been used every year the Cumberland road was before the House, and was both idle and unprofitable.” It could not be the absence of a reference to the Cumberland Road in President Van Buren’s recent annual message. “He was not aware that it had ever been customary for the President of the United States to notice these great works in his annual message to Congress; and therefore, there was nothing to warrant them in supposing that he was opposed to the Cumberland road”

Perhaps the problem was that 1840 was an election year. To illustrate his argument, he quoted from proceedings from the *Globe* for 1834 on the bill for the Cumberland Road, “and then went on to allude to the effects to be produced on the South, if it could be satisfied that these appropriations would cease.”

Representative Bell’s objection was that approval of Representative Casey’s motion with instructions to the Committee of Ways and Means “compelled the House to express an opinion” on the matter:

He expressed his wish that some settled system of internal improvements should be adopted, by which a known and fixed amount should be appropriated every year, and by this means break up that system of combinations and alliances which had too often carried through the most objectionable appropriations. He blamed the members from the South for their unalterable and unqualified opposition to internal improvements in every shape, and believed that such opposition had caused the combinations of members from the Northeastern and Western States, which had enabled them to carry all their sectional objects through the House. He had no doubt but that millions might be saved to the South by their relaxing their system and admitting of fixed and permanent appropriations for objects worthy of the national bounty.

Because of the lateness of the hour, the House adjourned before Representative Bell had completed his comments. He reserved the right to finish the next time the subject came up.

The next time turned out to be March 2:

Mr. B. said that the President of the United States had expressed himself to the effect that he would not consider it expedient to veto any bill for this purpose, and referred to a letter in the Globe from three members of the House in relation to the Cumberland Road. He understood it to be called forth, with a view to ascertain whether the Administration was opposed to the road; and if so, to have some evidence on which its hostility was predicated. He said, as the Secretary of the Treasury had placed the omission of an appropriation for this road upon the ground of the depletion of the Treasury, that they should retrench their own expenditures – that the starting point was the House of Representatives.

Mr. B. referred to several speeches which had been made by members of the Administration on the subject of the road, and said that in some portions of the country the Democracy [sic] opposed the measure; and in others, sustained it.

Some, he thought, might wonder why he opposed internal improvements that he actually supports:

It was on the ground of inexpediency, as he had stated ten years ago – because there was no system in relation to them Mr. B. referred to General Jackson's veto of the Maysville road bill, and said the ex-President had only postponed the system of internal improvements until the national debt should be paid off; and that Mr. Van Buren had never, directly or indirectly, denied the power to appropriate money for that purpose. Jefferson, Madison, Washington, Monroe, the elder Adams, and Jackson, and the present President, all admitted the constitutionality of the power.

With the conclusion of Representative Bell's statement, Represent Casey offered a modification of his motion referring the National Road Convention's memorial to the Ways and Means Committee:

That the petition be referred to the Committee on Ways and Means, with instructions to report a bill making a reasonable appropriation for the continuation of the National road in the States of Ohio, Indiana, and Illinois, for the year 1840, to be expended under the direction of the War Department, said appropriation to be subject to all the restrictions and conditions of former appropriations on said road.

He explained that the committee should act on its own discretion. "He probably owed the committee an apology for having proposed to instruct them at all." He had done so because "he was certain" the committee would not report a bill without instruction.

Due to the rules of the House, discussion of his motion was preventing members, including himself, from introducing their own petitions. This discussion, he said, “ought not to have occupied a week, [but] had taken a very wide and unnecessary range.” Therefore, he moved the previous question.

Instead, the House adjourned.

The House finally voted without further debate on the motion, as well as the Pickens and Marvin amendments on March 16. After the House rejected the Marvin Amendment, 80 to 112, Representative Pickens withdrew his motion amending the Marvin Amendment “in view of the vote given.”

The House then voted, 88 to 109, to refuse to refer the National Road Convention memorial to the committee with instruction. “The memorial alone was then referred to the Committee of Ways and Means, without instructions.”

Following the vote, Representative Rariden gave notice that he soon would ask leave of the House to introduce a bill to make appropriations to continue the Cumberland Road in Ohio, Indiana, and Illinois. He did so on March 23. In asking leave to introduce the bill, he said “he did it in good faith, and hoped the vote would be given in the same spirit”:

There could (he said) be no propriety in granting the leave, if the same is only to result in the consumption of time by a protracted and exciting discussion, without the design finally of granting the appropriation; he therefore hoped the vote for leave would indicate the views of the House in regard to the appropriation proposed by the bill.

With the clock approaching 5 p.m., a brief debate took place on whether to lay the motion for leave on the table or order it to lie over. The House agreed to the lie-over option then adjourned. In the end, the House would not grant leave to Representative Rariden to introduce his bill.

Similarly, Representative Reynolds begged leave on March 26 to introduce a bill authorizing the Secretary of War to conduct a survey of extension of the Cumberland Road from Vandalia, Illinois, to Alton by way of Greenville. The House, for parliamentary reasons, did not admit the motion.

The Senate still had its bill under consideration for continuation of the Cumberland Road through Ohio, Indiana, and Illinois. On March 17, Senator Norvell had introduced an amendment adding a section to the bill “making appropriations for the further prosecution of the improvement of all the roads, rivers, and harbors, which have been heretofore commenced by the General Government.” In view of the “exhausted condition” of the Treasury, he would defer most of the appropriations “if the Cumberland road bill were not pressed upon us”:

But if we had to borrow five millions of dollars, or to authorize the issue of that sum in Treasury notes, to enable us to go with that expensive work; and to

replenish the exchequer for other purposes; he thought that it would be equally right and proper to borrow or issue ten millions, instead of five, to enable us to improve the harbors, rivers, and roads in other States, for the completion of which he considered the faith of the Government more evidently pledged than for that of the Cumberland road. The former works were commended, and to be continued out of the general funds of the Treasury. The Cumberland road was to be made out of a special fund, which had been run out long since.

Estimates for the projects were available. He wanted his bill printed to give the Senate a chance to consider it “and to see that it conformed to official estimates made by the topographical and military bureaus.” He urged the Senators from Indiana and Illinois to allow consideration of the bill to be postponed until the following day.

His point was that appropriations for the additional projects would fail if not linked to the Cumberland Road bill:

It would be vain for us to indulge the delusion, or to affect to believe, that the separation of the propositions, so naturally connected, could secure the success of both: it might be fatal to that of either. The estimate for the Cumberland road had come to us in the same report, under the same head, in the same table, with the estimate for the other roads, rivers, and harbors, for the completion of which the amendment which he had submitted proposed to make appropriations. Why, then, should the Senate select a single object, detach it from the others of kindred nature, and make it the favored and favorite work for Government patronage?

Senator Young had pointed out that the appropriation for the Cumberland Road had always been kept separate from other comparable projects. If so, said Senator Norvell, and “he entertained great doubt,” but in that case, “the practice had been improper and unjust, and should be arrested.”

The Senate agreed, 20 to 14, to his motion to postpone debate Thursday, March 26.

On that date, the Senate took up the bill appropriating funds for continuation of the Cumberland Road, starting with Senator Norvell’s amendment. In support of his amendment, he began by saying that in a presidential election year, he understood why Senators from the three States were supportive of the project affecting their States. “It was to be anticipated that they would be unwilling to embark their fortunes with the kindred claims of other States whose weight was not so commanding as theirs in the political scale, or who would not present so compact an object, so exciting an interest for the appropriating patronage of the Government.” He trusted that the Senate would take a different view, and agree to the principles behind his “more enlarged and comprehensive policy.”

Some of the supporters of the Cumberland Road bill did not approve of “combinations for the purpose of carrying measures through Congress.” They forgot the system of logrolling – that is, “combining interests to effect an object” – which was “no worse in principle, no more to be condemned in practice, than a system of scrambling, in which all

the liberal feelings of the human heart were suppressed, and selfish, local, and personal objects alone were sought to be accomplished, without regard to any other consideration, social or national.”

He had taken the time to research the claim that Cumberland Road bills always stood alone. “This assertion was a great mistake.” He listed five appropriations acts that included funds for the Cumberland Road along with dozens of other projects:

Here, sir, was not one instance only, in which this rickety child of the honorable Senator had been put out to nurse, but five several times, within a few years, it had to be sustained by incorporation with other objects, such as his amendment now before the Senate embraced. He had thus proved to demonstration the fallacy of the declaration that the Cumberland road had always stood upon its own merits, and was too strong and too sacred to be mingled with other objects more constitutional and national in their character.

His amendment embraced only “work long in the progress of construction or improvement; works which had often been examined and reexamined by the most scientific officers; works, the estimates for which had frequently been subjected to the most rigid scrutiny by the appropriate committees.” Every Senator was familiar with the projects. He listed several, including funds for the Cumberland Road, with the amendment’s appropriations totaling \$2,289,478. “The sum was tolerably large, but not greater than the importance of the improvements would justify.” Moreover, in looking at each project, the Senators could reduce the appropriations. “They might cut down the amount to \$1,000,000, or to half that sum.”

He emphasized that his amendment “was not a substitute, but an addition to the Cumberland road” appropriation bill:

The Cumberland road, after it left the river Ohio, had become a sectional rather than a national improvement; and viewed, as it was, as a sectional measure, it had no special claim to the favor of a Michigan Senator. Its tendency was to facilitate immigration not into that State, but into the States south of her. It would promote their settlement and cultivation; and while he contemplated their march to prosperity with pleasure, he could not consider it the part of wisdom to hasten that march, while they continued to exhibit a disposition to withhold from his State the means of adding to her advances in agriculture, navigation, commerce, and population. He was not satisfied with professions; he wanted votes.

He added, “At any rate, if he stood alone in his vote, he should insist upon taking the sense of the Senate on the subject, until he found that any further perseverance would be useless.”

Senator Augustus S. Porter, a Michigan Whig, said he would vote against the bill, “not because I am hostile to these appropriations, but because I am friendly to them.” He was eager to support western trade, “which I believe to be essentially interwoven with the fate of the harbor policy.” The Norvell Amendment would appropriate \$2.5 million for a

variety of projects and, although the Topographical Bureau had provided estimates, “I have enjoyed no means of being advised in detail of the merits of all these works”:

I am left to the inference which, in the absence of information I must draw, that there may be some for which further appropriations would not be demanded by high considerations of public utility. A suspension may be advisable as to some, and an entire abandonment as to others. I believe, sir, this want of information in detail pervades almost this entire Senate. I do not believe it is prepared to act advisedly on this complicated amendment; and this fact would of itself be fearfully portentous of the fate of the harbor bill were it dependent alone on the vote about to be taken.

He rejected the characterization of the Cumberland Road as a “rickety child” requiring other provisions in the legislation to secure appropriations for its continuation:

In my judgment, sir, this is a most unfortunate personification for my colleague. If the Cumberland road bill be indeed “a rickety child,” I am unwilling to give it an opportunity of imparting any of its infirmity to the harbor bill. An inseparable union of the two will lead to a common fatality. Equally certain, too, for reasons I have stated, would be the doom of our favorite local policy, were his amendment to be pressed now as a substitute, and the vote on it to be final and conclusive.

He wanted the harbor bill to stand on its own:

We all know there are gentlemen in both Houses whose opinions in respect to the power of Congress to appropriate money for the Cumberland road are such as to forbid the hope that their voices can be had for its continued prosecution at the national charge. The naked question comes up, sir, for I take it as granted that the two per cent. fund is no longer a fountain at which constitutional sins may be washed away. The number of these gentlemen is by no means small; and, while the entire bill, with amendments, is sure to encounter their opposition on this ground, and while we are, by embarrassing the action of the Senate on the Cumberland road bill, unnecessarily inviting the hostility of its immediate friends to our measure, in case theirs falls through our act, we have “the hope of despair” to look to that Senators will vote for us in the dark (for they must do so if hey [sic] vote at all in our favor) on this voluminous, complex, uninvestigated, (except in the figures of the Topographical Bureau) amendment of my colleague.

After speaking at length about the value of the harbor bill, especially to the city of Detroit, he concluded:

I will take occasion, Mr. President, while I am up, to say to the friends of the Cumberland road that I am with them. I shall vote for all necessary and judicious appropriations for its continuation, let them be what they may, unless objections I do not now anticipate shall present themselves. I regard it as a great national improvement. I admire the wisdom of its conception, and commend the zeal with

which its friends have pressed thus far its onward march toward completion. I belong to that school of constructionists who believe in the power of the Federal Government, with the assent of the States whose territory is occupied for that purpose, to construct works of internal improvement of this character, and I cannot regard that work as “sectional” which, like this, will, in its completion, penetrate more than one fourth of the States of this Union, and by direct or indirect means contribute to the common benefit of all.

I will only add, sir, that I do not believe the zeal of my colleague for this harbor appropriations to be less earnest and devoted than my own. We only differ as to the time and mode of presenting the subject to the consideration of the Senate, and if I do not greatly mistake the indications around me, the vote about to be taken on this amendment will show that I have judged correctly.

The Senate then voted on the “first branch” of the Norvell Amendment, defeating it, 1 to 34. Then as the *Globe* put it, “Mr. NORVELL then said that as he perceived an indisposition in the Senate to favor his amendment he would withdraw the residue of it.”

With the amendment disposed of, the Senate turned to the Cumberland Road bill itself. Senator Benton moved to amend the bill by inserting the words “east of Vandalia” after the word “Illinois.” The Senate agreed to the motion.

Senator Clement C. Clay, a Democrat from Alabama, moved to strike all of the bill after the word “dollars” in the eleventh line. The motion would have eliminated these words:

Which said appropriations are made upon the same terms and shall be subject to all the provisions, conditions, restrictions, and limitations touching appropriations for the Cumberland road, contained in the act entitled “An act to provided for continuing the construction and for the repair of the Cumberland road,” approved the 3d of March, 1837.

He reminded his colleagues of the language in the Act of March 3, 1837, that the 1840 bill referred to:

Sec. 4. And be it further enacted, That the several sums hereby appropriated for the construction of the Cumberland road in the States of Ohio, Indiana, and Illinois shall be replaced by said States respectively, out of the fund reserved to each for laying out and making roads under the direction of Congress, by the several acts passed for the admission of said States into the Union on equal footing with the original States.

This provision, Senator Clay said, implied that the appropriation “could or might” be replaced from the two-percent fund. Any such assertion was untrue, “and was consequently calculated to deceive and impose upon the country.” The Senate should take care that its laws “should be founded in truth, and contain nothing false and delusive.” He recounted the statistics of public land acreage and dollars paid, leaving the two-percent fund exhausted:

No, sir, it is untrue, deceptive, and fraudulent. Every gentleman who will turn his attention to the facts and the figures must know it to be untrue, must be conclusively satisfied that the clause of the bill in question asserts, in substance, that the United States Government is to be reimbursed out of a fund which has no existence now, and never can exist.

Considering that reimbursement “was wholly fallacious and unfounded,” he expected that the Senate would support his motion. With that language removed, the “naked question” would be the constitutional power of the general government to make internal improvements within the limits of the States:

Upon that question, he said, as well as the expediency of exercising such a power, his mind had been long made up, and he was prepared to meet it. He said, moreover, in the present state of things, when the national Treasury was exhausted, when we should be compelled to borrow the money which was to be expended on this road, and when, too, we saw the proposition distinctly made that we should hereafter add to the expenditures already made about eight million dollars more, it was peculiarly proper that we should strip the subject of all disguises, and march up to the true question, and meet it with manly firmness.

The Senate moved on to other business, but returned to the Cumberland Road bill the next day, March 27. Senators Young and Benjamin Tappan of Ohio spoke in opposition to the Clay Amendment, but the *Globe* did not record their statements. Senator Clay asked the Senate’s indulgence for a response to Senator Young:

The Senator to whom he referred had endeavored to elude the force of the facts which he (Mr. C.) had on yesterday brought to the view of the Senate, establishing the total exhaustion of the two per cent. fund, six times told, resulting from the sales of lands in Ohio, Indiana, Illinois, and Missouri, by a construction which was entirely new and most extraordinary. The Senator from Illinois had insisted that by the terms of the compacts between the United States and those several States, on their admission into the Union, the General Government was bound to make, that is, as Mr. C. understood him, to complete, a road leading to each. Such a construction was a palpable perversion of the meaning of the language employed in every one of those compacts, as could be shown by a moment’s recurrence to them.

Each of the Enabling Acts had set aside 5 percent of the revenue from land sales for roads, with the amount split between roads within the State (3 percent) and leading to the State (2 percent). “Now, (said Mr. C.) can it be pretended that, under this agreement, Congress is bound to do more than faithfully ‘to apply two fifths to the making of a road’ leading to either of those States?” He continued:

If it had been intended that Congress should make the road, that is, complete a road leading from the navigable waters of the Atlantic to either State, for what purpose was the amount to be expended for that object limited to two per cent. of the net proceeds of the public lands? The cost of such a work was wholly

unascertained; and if it had been intended that it should be done, regardless of expense, it was altogether absurd to limit or name the amount to be expended.

It was plain, he stated, that “all Congress ever intended to do in this matter was to aid in making roads leading to the new States to the extent of two per cent. of the net proceeds; and this had been faithfully done, and far more, as I shall show before I sit down.” He discussed expenditures thus far for the Cumberland Road totaling \$6,609,407.76. He went through each State, citing the balance of amounts beyond the two-percent fund in favor of the States:

Ohio:	Balance in favor of the State:	\$3,159,532.53
Indiana:	Balance in favor of the State:	\$1,313,532.64
Illinois:	Balance in favor of the State:	\$ 825,412.12
Missouri:	Balance in favor of the State:	<u>\$ 583,902.53</u>
	Total:	\$5,883,902.82

He did not claim his figures were “precisely accurate.” Referring to a comment from Senator Young that the *Globe* did not report, he said:

He trusted that gentleman would consider this response to his question, “how much has been appropriated to each of those States?” entirely satisfactory until he could show some other claim to the public treasure than the two per cent. fund arising out of the compacts for their admission into the Union.

Senator Clay also denied “in every particular” Senator Young’s assertion that the Cumberland Road was “a great national work, in which many States are interested.” If by “great national work” was meant the road was long and had received large expenditures, Senator Clay would agree:

This, however, would not do, for upon these principles a road of equal extent and equally costly through any other part of the Union would equally deserve the character of national, and, in that way, all roads might be rendered national. Such a position, he presumed, would be too absurd even for a friend of the Cumberland road to maintain. He could imagine no road to be properly national unless within the constitutional power of Congress; nor did he know how that could be the case, as there was no such distinct, substantive power granted us by the Constitution, unless it could be made an incidental one, necessary and proper to carry some delegated power into effect.

He had thought construction of the road might be incidental to the war power, and that Congress could appropriate funds for a road to some vulnerable site. But no such case applied to the Cumberland Road:

This road leads to no frontier, either bordering upon any Indian tribe, upon the possessions of any foreign Government, or to any point on the Atlantic or Gulf of Mexico. After it reaches the Ohio, that river, which runs a great portion of its

distance nearly parallel to it, affords easier and cheaper transportation for troops and all the munitions of war than the Cumberland road.

Moreover, the road was not a commercial road, except locally, because commerce, too, flowed on the river.

It passed through only four States, counting Missouri, out of 26 States. Except those four, "it cannot be said to be used by, or even useful to the citizens, generally of any other State." Nevertheless, "all the other States are to be taxed to make a great road for the convenience of parts of four only":

Sir, this is unequal, unjust, and ungenerous; it is not that equality and fairness which lies at the foundation of all our institutions. I protest it as not warranted by the letter or spirit of the Constitution.

But, sir, the Senator from Illinois [Mr. Young] has thought proper, by way of sustaining this unwarrantable and iniquitous measure, to attack my consistency If he had ever pursued a course inconsistent with that he was now pursuing, it did not prove that such a measure was right

Sir, (said Mr. C.,) the Senator from Illinois asks, with a triumphant air, alluding to me, "Did not the Senator from Alabama vote for the Maysville road bill?" With all candor and frankness I answer, I did. But let me state the consideration which influenced and determined that vote, before the gentleman shall avail himself of its imagined support or condemn me for inconsistency. Sir, I repeat, I did vote for the Maysville road bill; but remember, at that time, and even now, not one dollar of the two per cent. fund arising from the sales of the public lands in Alabama or Mississippi, had, or has yet, been appropriated to making roads, according to the terms of the acts for their admission into the Union [No] road leading to either had been made or commenced by or under the direction of Congress, nor had one dollar of that fund been applied according to the terms of the respective compacts. The Maysville road (commonly so called) was a link in the great road proposed to be made from Zanesville, on the Cumberland road, by way of Maysville and Lexington, Kentucky, Nashville, Tennessee, and Florence, Alabama, to New Orleans, which (if he was not greatly mistaken) had been laid out with the approbation of the then Chief Magistrate by the engineers of the United States. From what he had stated it would be apparent that the Maysville road was a part of the great road contemplated, which led to and through Alabama and Mississippi to the city of New Orleans; and as the whole two per cent. fund of Alabama and Mississippi which had then accrued, or might thereafter accrue, was unappropriated to any object contemplated by the compacts of those States with the General Government, he thought he was sustained and justified in the vote which he had given, and which had attracted the animadversion of the Senator from Illinois.

However, if the circumstances stated do not sustain my vote on that occasion, I have another answer to give, which ought to be satisfactory to every ingenuous

mind – that is, if not so justified, I frankly admit my vote was wrong. He said he regarded a confession of error one of the best modes of atonement. But does all this prove that the Senator from Illinois is right in pressing upon us a claim for an expenditure of money so prodigal and unwarrantable? He would leave the Senate to decide.

Moreover, Senator Clay had voted against all other similar bills to the present day. “This was some evidence, Mr. C. thought, that if he had sinned at all upon this subject he was not a very great sinner.”

Senator Young had argued that the Senate had passed a bill relinquishing to Alabama the revenue from the two-percent fund. Senator Clay said this assertion meant “Illinois and her co-States in this business must have all they may think proper to ask.” He pointed out that the fund had been accumulating for 20 years “and now the bill as passed does not entitle her to receive all that has accrued at once, but only in quarterly payments, and as she may expend corresponding sums, derived from other sources, upon the contemplated improvement; and she can only receive the balance as it may accrue.” The State would not receive one penny until the general Treasury had received it:

How different with Illinois and other northwestern States! They have not only anticipated the receipt of every dollar of the two per cent. fund by appropriations before it accrued, but the General Government has expended for their benefit millions of dollars beyond the largest amount that ever can possibly accrue

It must be apparent that the bill to change the application of the Alabama two per cent. fund bore no analogy whatever to the bill now under consideration, and could not aid the gentleman in sustaining his claim to the appropriation which it proposed.

The Senate adjourned without voting on the bill.

Toward the end of the day on March 31, the Senate took up the Cumberland Road appropriation bill, with the first order being the amendment from Senator Clay of Alabama to strike out the two-percent clause. Senator Wright said he did not want to debate the merits of the bill; others were in a better position to debate the merits of the road. He had voted to approve appropriations for the road in the past and wanted to do so again, as long as it “should retain its usual form, the characteristic which had distinguished appropriations for this road from those for internal improvements generally.”

If the Clay Amendment were approved, he would not be able to vote for the bill. The motion would free the appropriations from the “provisions, conditions, restrictions, and limitations” of the 1837 Act. That would leave the appropriation “open, general, and unconditional,” and in that respect would be far broader than the amendment intended. He went through the provisions of the 1837 Act that would not apply to the present appropriation. It would eliminate the limitation in the first section:

That the said road within the State of Illinois shall not be stoned or graveled, unless it can be done at a cost not greater than the average cost of stoning or graveled said road within the States of Ohio and Indiana.

It would eliminate another restriction in the same section:

That in all cases where it can be done, it shall be the duty of the superintending officers to cause the work on said road to be laid off in sections, and let out to the lowest substantial bidders after due notice.

The amendment also would eliminate the condition in the second section of the 1837 Act:

That the second section of an act for the continuation of the Cumberland road in the States of Ohio, Indiana, and Illinois, approved the 2d day of July, 1836, shall not be applicable to expenditures to be made on said road.

The referenced provision of the 1836 Act called for expenditure of funds to complete continuous portions of the road, “so that such finished parts thereof may be surrendered to the said States respectively.”

Senator Wright thought that some other Senators would agree with him that these were not provisions that should be overlooked.

He realized, of course, that the purpose of the Clay Amendment was to eliminate the provision in the 1837 Act calling for reimbursement of Treasury funds from the two-percent fund. Senator Wright went through the history of the set-aside from public lands sales, then turned to the Act of March 29, 1806. Its provision setting aside 5 percent of revenue, including 2 percent for roads leading to Ohio, made the Cumberland Road, as conceived, peculiar as a work of internal improvement prosecuted by the authority and under the direction of Congress.” He said:

It was not necessary for him to defend the wisdom of this policy at that early day. It was sufficient that it was then adopted, and was one of the expositions, by the then fathers, of the powers and duties of Congress growing out of these new and peculiar compacts with the new States. It was too late for him now to question the soundness of the principles upon which they acted, or the wisdom of the policy which guided their course. Nearly every Congress from 1806 to the present time had followed in their footsteps, and every President of the United States, from Mr. Jefferson to the present incumbent, had approved bills appropriating money for this road.

Every appropriation act, except two, for surveying or constructing the road had called for reimbursement from the two-percent fund. “He had found some bills appropriating money for the repairs of those portions of the road which had been once called completed which did not contain this pledge, as he thought they should not” because these “were mere appropriations for the preservation and security of the property of the United States,

as this road when finished clearly was, until transferred to the States, or otherwise disposed of.”

One of the exceptions was the Act of May 15, 1820, appropriating \$20,000 for a survey of a road from Wheeling to the Mississippi River, with the funds to come from the general Treasury. He considered the legislation unique in the history of legislation for the Cumberland Road, “but such as it was, he had felt bound to present it as an exception to the rule.

The other exception was the Act of March 2, 1833, one of the bills President Jackson signed 2 days before leaving office. “This was a plain case of departure from the rule of charging these appropriations upon the two per cent. fund . . .”:

All who were here at the session of 1832-33 will remember that it was one of the most exciting periods of our history, and that an unusual number of bills of the deepest interest finally passed the two Houses and reached the President within the last few hours of the session, which closed on Saturday the 2d of March.

Instead of the usual Cumberland Road appropriations bill, it was of “an anomalous character, coupling harbors, rivers, roads, and a variety of other subjects in the same bill”:

Its title is a very imperfect index of its contents, and yet it is evidently made up of the substance of the titles of three or four originally independent bills. It is “An act making appropriations for carrying on certain works heretofore commenced for the improvement of harbors and rivers, and also for continuing and repairing the Cumberland road and certain territorial roads.” It embraces more than thirty separate and independent appropriations, which take from the Treasury more than one million dollars. In such a bill, and reaching the President at such a period, it was not in the least surprising to him that the absence of this qualification to the Cumberland road appropriation was not noticed.

He signed the Act, but would not have done so had he noticed the absence of the language for repaying the Treasury from the two-percent fund.

Senator Wright realized that the two-percent fund would not be sufficient to reimburse the Treasury and “therefore that the clause in the present bills was wholly useless.” In the interest of fairness, he suggested:

The practice commenced with the commencement of the work, to anticipate the moneys which this fund was to yield, and if those anticipations had been pushed too far, it was no reason, to his mind, why we should abandon our hold upon that portion of the fund which remains.

According to an official statement that Senator Wright had received from the General Land Office, the States of Ohio, Indiana, and Illinois had a combined 26,835,234 acres of unsold land as of the third quarter of 1839. He estimated that at current prices, sale of

the land would pay \$670,000 into the two-percent fund. Adding Missouri into the total would increase the land to 32,154,897 acres, bringing the total of the two-percent fund to \$800,000:

But when it is considered that the unsold land in all these States must become more valuable as settlements increase and improvements in its vicinity are extended, who shall say what limit shall be fixed to this contingent fund? In any event it seemed to him a plain dictate of duty to secure whatever it is to yield to reimburse the Treasury for this expensive work.

Shall we do this if we pass the amendment now proposed, and thus by our own act release the pledge for the future?

By comparison, Congress was taking actions regarding the other new States. As mentioned earlier, the Senate had passed a bill to pay the fund to the State of Mississippi, and a similar bill for Alabama had passed the Senate and was on its way to the House. For Michigan and Arkansas, the 5 percent had been yielded to the new States:

Other new States will come after these examples, and who can make himself believe that if we strike out this clause, and thus release our hold upon the future accruing revenue to the fund from the States of Ohio, Indiana, Illinois, and Missouri, those States will not come, when their road shall have been completed, and tell us, up to 1840 you held and expended this portion of our two per cent. fund, but in that year you, by your own express act, refused longer to pledge it for the Cumberland road, and the money which has come into your Treasury since that period is ours, upon the principles which have governed your conduct toward the other States. Who can convince himself that our successors will be able to resist such an application from these States?

He realized that some Senators were unalterably opposed to the bill, so his reasoning about the two-percent fund would only “add to their anxiety to press the motion, that they might force him and others who held similar opinions to vote against the whole measure.” In fact, he thought, that was the point of the Clay Amendment. “He was conscientiously opposed to the bill in any shape; and its defeat is the object of his motion.”

He closed by saying that to those who supported the bill, “the pledge of this fund could not be objectionable, even if they did not consider it any longer useful.” They will not jeopardize the bill “rather than not discharge it from what they consider, at the worst, but harmless surplusage, and that, too, after they know that others, equally friendly, consider the provision proposed to be stricken out one of essential, of vital importance”:

He must be permitted to believe, therefore, that however far he may have fallen short of producing conviction upon the minds of either the foes or the friends of the measure as to the importance of retaining the pledge of this two per cent fund, the simple information that he and others so held it would induce every friend to the Cumberland road to vote against the proposed amendment.

Alabama Senator Clay requested the Senate's indulgence while he replied to "some of the remarks which had fallen from the Senator from New York." Senator Wright had highlighted provisions of the Act of March 3, 1837, other than the one the amendment was about:

Seizing upon those other conditions and limitations which no one who had before participated in the debate had deemed of sufficient importance to be noticed, the Senator had apparently endeavored to deter other gentlemen from supporting the amendment, by remarking with portentous solemnity that it went much further than the mover (Mr. C.) or others supposed.

As relates to himself, Senator Clay said "he knew perfectly all the conditions and limitations in the act referred to, and he presumed other gentlemen were not so uninformed as seemed to be supposed."

The "most obnoxious condition" proposed to be submitted to the President was "the false idea and delusive hope that the amount appropriated was to be replaced by the said States respectively out of the fund reserved for each for laying out and making roads under the direction of Congress." Because Senator Wright had acknowledged that the fund "was already exhausted," Senator Clay said that including his amendment in the bill "was compatible with the fairness, candor, and dignity which should ever be manifest in the proceedings of this body."

He referred to the other provisions that Senator Wright had listed. Senator Clay had no objection to them at all. "Neither of them comes in collision with my object; and I am perfectly willing, if the money is to be appropriated, that it shall be applied under all those restrictions, and any others the Senate may deem salutary." His amendment would merely strike out a portion of the bill, "and how easy would it be, if the other provisions brought to the attention of the Senate were necessary, to have them inserted."

Although Senator Wright had cited the compact with the States, Senator Clay said "he understood the Senator from New York to admit, distinctly, that we were bound for no more by those compacts, for laying out roads leading to the several States, and that the fund reserved for that purpose had long since been entirely exhausted." At the same time, he continued, Senator Wright had referred to the taxing rights the new States had yielded to the general government. Senator Clay pointed out that "the new States had assented to these conditions, and made the several compacts, and were bound by them, however hard they might operate where the public land remained long unsold." If those States thought they were unfairly treated, "let the Senator from New York bring in a bill to make up for all deficiencies, and placing all on an equal footing":

Let Alabama, Mississippi, Louisiana, Arkansas, and Michigan first be placed on an equality with the other four new States by expending for their benefit as many million dollars as had been literally poured out of the Treasury on the Cumberland road; and let your liberality be apportioned among the several States in proportion to the amount which each has paid into the Treasury for public

lands, and we shall have less cause to complain of injustice in your exercise of unauthorized power.

Referring to all the bills that referenced the two-percent fund and the exceptions, Senator Clay agreed with Senator Wright that President Jackson had signed one of the exceptions, “but the Senator does that distinguished patriot the justice to say that he alluded to it afterwards, and said the want of the reimbursing clause had escaped his attention, in the hurry of business, perhaps on the last night of the session, or he should have withheld his approval”:

And so it would doubtless be with the present Chief Magistrate if a bill were to pass for the same object and be presented without such a clause; he, too, professing the same views of constitutional power would feel bound to return it with his veto. To avoid this result shall we send him a bill masked in fraud? Shall we send it to him with the assertion on its face that money “shall be replaced by the States respectively” out of a fund which has long ceased to exist?

Although President Jefferson had signed legislation related to the Cumberland Road, Senator Clay said, “That venerated man never gave an opinion that any delegated power of the kind was to be found in the Constitution.” The closest the Constitution came, in Senator Clay’s view, was the declaration:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

This power, along with the exemption of public land of the United States from taxation, justified the compacts that resulted in construction of the Cumberland Road. “It is very obvious that the construction of such roads would encourage and facilitate emigration, and accelerate the sale of the public domain. He saw construction in the wilderness as a justifiable exercise, “but when those States had been settled from twenty to forty years, were in a high state of cultivation and improvement, with millions of inhabitants, and with numerous roads leading to and through them, how could it longer be pretended to have any necessary connection with the settlement of the country or the sale of the public lands?”

He also addressed Senator Wright’s inquiry about what the objection to the clause was for those who would support the bill without it:

Mr. C. expressed his surprise at this question. He asked, in turn, is it no objection to a bill, which is to be sent to the President, to tell him, in effect, that this money is due by the compacts with Ohio, Indiana, Illinois, and Missouri, and that it is to be reimbursed from a particular fund, when we know it is not so due, and, moreover, know that we never can be reimbursed. Sir, such are the facts; and the Senator from New York has admitted them by telling us he knew that we had already appropriated more money to the Cumberland road than had or ever would accrue from the two per cent. fund of the four States. Let gentlemen decide for

themselves whether, because they believe an appropriation constitutional, they can consistently attach to the bill an unfounded assurance to the Executive and to the country that the amount is due to us by contract, and will be refunded, when they know it is not due and will not be refunded.

He “expressed his profound regret” that those who supported the Van Buren Administration “should support a measure of the character of the bill before the Senate.” But having demonstrated that the two-percent fund was exhausted, he believed that the “naked question” remaining was “whether the General Government could make appropriations for the construction of roads within the States consistently with the Constitution or principles of sound policy.” The question had been addressed by President Jackson:

It would be recollected that President Jackson, in his veto message on the Maysville road bill, and in his subsequent messages on similar measures, had laid down principles entirely unfavorable to the exercise of such power as that now contemplated. The Cumberland road, he thought, had been sufficiently shown to be a mere local improvement in the proper sense of those terms. Although it ran through several of the States, it was wholly unconnected with any national object; it was entirely in the interior of the country, and could not be said to be necessary to or even to facilitate its defense. Not being national in its character, it was without and beyond the constitutional power of Congress; for all must admit that this Government was instituted for national and not for State purposes.

Senator Clay observed that in the quarter of the country where President Jackson came from, people “were in favor of a strict construction of the Constitution of the United States, and a rigid limitation of the powers of this Government to its legitimate functions”:

During the last presidential canvass, when the present Chief Magistrate was a prominent candidate before the people of the Union, among the strongest objections urged against him in the South was that he was latitudinous in his constitutional opinions, and would favor internal improvements by the General Government. This objection was met by his friends and supporters with his pledge that he would “follow in the footsteps of his illustrious predecessor,” by the resolution he offered in the Senate of the United States in December, 1825, declaring that “Congress does not possess the power to make roads and canals within the States,” and by his remarks, on various occasions, expressive of his opinion that Congress could not constitutionally exercise any such power. He was among those who then and still believed the President a strict constructionist, and opposed to the exercise of the power in question. It was under this confident belief that the present Chief Executive had received such a generous support in the Democratic States of the South.

He had no doubt that if presented with a bill that violated those principles, President Van Buren “would do his duty.” Could not those who supported the President see, Senator Clay asked, that sending him a bill that “masks and disguises” its true character were, “in

truth, opposing the acknowledged principles on which the Administration came into power, and bringing it into discredit with the Democratic Party?"

A political party must remain committed to its principles. A party could not be harmonious if one part of it favored strict construction and the other had a "latitudinous construction of the Constitution – one portion in favor of an economical and the other an extravagant and prodigal administration; one portion in favor of large appropriations to a certain class of objects in one quarter of the Union, and against such appropriations for like objects in another quarter." The "mass of our plain, honest, intelligent, but unsophisticated fellow-citizens could never be made to understand why millions of dollars could be constitutionally appropriated for a road in Ohio or Indiana, Illinois or Missouri, while it was held to be unconstitutional to do the same thing in Tennessee or Alabama, South Carolina or Georgia."

He concluded:

They could not be made to understand – he hoped they never might – that the Constitution meant one thing north of the Ohio, and another thing entirely different on the south side of the same river. They understood that the Constitution was intended to impose equal burdens and dispense equal benefits and blessings, among all the free citizens throughout all the States of the Union. Equality of rights and privileges, burdens and benefits, amongst all the free citizens of this great and enlightened Republic was the great principle which laid at the foundation of all our institutions. Disregard and destroy that distinguishing characteristic, and you jeopardy [sic] the happiness and prosperity of this great people if not the existence of the Government itself.

After additional speeches that were not reported in the *Globe*, Senator Henry Clay proposed to modify the amendment of Senator Clay of Alabama, but the Senate adjourned for the day.

The following day, April 1, the question of the amendment proposed by Alabama Senator Clay was taken up after he accepted the amendment proposed by Senator Henry Clay. Kentucky Senator Clay "addressed the Senate at length in favor of the amendment," but the *Globe* did not report his remarks. The Senate then voted, 17 to 19, to reject the amendment.

Alabama Senator Clay proposed a new amendment that would strike all after the enacting clause of the bill and insert:

That the two per cent. of the net proceeds of the sales of public lands in the several States of Ohio, Indiana, Illinois, and Missouri, which may accrue after the passage of this act, and which was reserved by the several acts for the admission of said several States into the Union, to be applied to the laying out and construction of roads leading to the said States respectively, be, and the same is hereby, relinquished to said States respectively, to be paid over to such person or persons as may be authorized to receive the same, to be applied by said States,

respectively, to such roads or canals within their several limits as they think proper: *Provided*, The Legislature of each of said States shall, before receiving any part of the said fund, pass an act, irrevocable without the consent of Congress, assenting to the provisions of the act.

Senator Clay said that based on the vote just taken rejecting his original amendment, “we were to go on appropriating money for this road on the pretext that the General Government was to be refunded out of the two per cent. arising from the sale of the public lands in the States to and through which it was to run, notwithstanding that fund, present and prospective, had been exhausted more than three times told.” Therefore, he had prepared the new amendment “to put an end to this enormous annual drain from the Treasury” in the form of appropriations for the Cumberland Road “by giving up all that was hereafter to accrue.” Considering the amount appropriated for the road above the accumulated 2 percent, namely \$5,513,395.58 appropriated out of \$6,609,407.76 expended, he thought that friends of the road surely “would consent to take all the fund which was hereafter to accrue, and release us from any further expenditure.” It appeared to him to be “a liberal proposition.”

He wondered how the friends of the road “could reject this proposition when no one denied that we had gone far beyond the amount which had accrued in past expenditures, and even to surrender all that could possibly accrue hereafter?” He thought “this question would determine how far the two per cent. really had anything to do with the bill or the money it granted.”

The proposition should be acceptable to those whose State was not involved in the Cumberland Road. He had earlier explained that decades would pass before sufficient revenue had accumulated in the fund to reimburse the Treasury, which would have expended that amount in a year or two. In view of the engineers’ estimate that the cost of finishing the road would be \$7,896,045.44, “he thought all must entertain the opinion that we should do well by making the surrender proposed by his amendment.” He added that he believed the actual expenditures would be greater than the estimate.

With that brief explanation, he left his amendment for consideration by the Senate.

After Senator Preston advocated the amendment, and opposed the bill at some length, Senator Young “went into an extended argument in support of the bill.” The *Globe* did not report either speech.

Alabama Senator Clay responded that the two-percent fund accruing over the years was “the basis of the whole argument in favor of the appropriation”:

But now, when it had been clearly demonstrated that the entire fund, so far as sales had been or ever could be made, had been long since exhausted, and consequently that the General Government had more than performed its compacts with those several States, the Senator from Illinois [Mr. Young] had assumed the bold and new ground that the Cumberland road did not rest upon the compacts.

Why, then, did the bill include the reimbursement clause and why were friends of the bill “so averse to striking out that clause, on the motion made for that purpose?” If friends of the Cumberland Road agreed with Senator Young, “the pertinacity with which he and his friends clung to the clause for reimbursement under the compacts was most extraordinary”:

He said the stage of the discussion at which this ground had been taken, and a recurrence to the course of argument which preceded it, gave it very much the appearance of an afterthought. The friends of the bill had not only resisted striking out the clause connecting it with the compacts between the United States and Ohio, Indiana, Illinois, and Missouri, but they had succeeded in overruling Mr. C.’s motion; they would not agree, he said, to place the measure, as he had desired them, upon its own merits, independent of any hope or claim upon the two per cent. fund; but still it retained that feature.

Yet the Senator from Illinois now maintains that the Cumberland road does not rest upon the compacts with the States interested. He said he would leave it to the Senate to say whether this course was not strangely inconsistent with the whole argument against his amendment and the vote by which it had been overruled.

Senator Clay of Alabama addressed Senator Young’s assertion that President Jefferson thought the road was constitutional:

Now, if the gentleman means to convey the idea that Mr. Jefferson believed the General Government possessed the constitutional power to make roads or canals within the States, I deny the assertion, and challenge him to the proof. Can the Senator from Illinois or any other gentleman show a single sentence in all that Mr. Jefferson has said or written to warrant the belief that he ever entertained the opinion that this Government possessed power to make internal improvements?

No, sir, it is impossible, except so far as to agree to expend two per cent. of the net proceeds of the public lands in making roads to the new States, to accelerate the settlement and facilitate the sale of the national domain, as he had stated in a former part of the discussion; and this was a mere incident to the “power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” But, although in this aspect that distinguished Republican had approved of bills making appropriations for the Cumberland road, and although those bills had anticipated the accrue ment of the fund reserved for that purpose, he had never exceeded its ultimate probable amount, nor had he ever signed a bill which did not promise reimbursement.

Alabama Senator Clay said his views on eliminating reference to the two-percent fund were based “on the principle of quieting a vexatious claim, and by way of buying our peace.” The history of the road was precedent enough:

It was on the principle to which he referred that several acts had been passed, making large appropriations for the Cumberland road on this side of the Ohio,

conditioned that the several States through which it passed would accept the road within their respective limits, and keep it up. Indeed, he said, a session of Congress seldom occurred that some act did not pass, founded on this principle of compromise; and he had no hesitancy in saying that one more advantageous or necessary than that proposed had never been passed.

Senator Daniel Webster, now a Whig from Massachusetts, said the bill called for a large amount of money in view of the present state of the Treasury, “and, as the object is not embraced in any estimate submitted by the Treasury Department, we shall be very likely, hereafter, to hear Congress reproached with extravagance and with disregard of the economical maxims of the Executive.” Nevertheless, he was inclined to vote for the bill.

Under the circumstances, he regretted that friends of the Cumberland Road based their plea for passage “on grounds which do not appear to me to be substantial.” He had voted for the Clay amendment to strike that portion of the bill “because the fund has long since been exhausted”:

This every one knows. Yet the section is retained to give the color of contract or obligation to the bill, instead of leaving it in the plain character of a bill making a direct grant of money out of the Treasury for constructing a road. This section is a little narrow isthmus, along which a few friends, it is hoped, may persuade themselves to walk, who are afraid of the broad general ground of the Constitution – a sort of bridle path which they can thread along and arrive at an affirmative vote by a way not known to others. I am against these contrivances, and place my support of the measure on grounds entirely different.

He recalled the history of the Northwestern Territory, which had been ceded to the United States under the Articles of Confederation. “All the property and rights belonging to the United States under the Confederation devolved upon this Government by the establishment of the present Constitution, as did also all their debts, compacts, treaties, and obligations.” The Constitution gave Congress the power to dispose of this Territory. At the direction of Congress, the land had been surveyed, divided into townships and sections, and then into States that had been admitted to the Union:

In general, Congress has done nothing to promote the sale of these lands, but to survey them and let them out; and, while yet held by Government, and for five years after, none of them are taxable by the State governments. The Government of the United States, therefore, in relation to these lands, is a great untaxed proprietor. As a great proprietor, then, holding these lands for sale, is anything more reasonable than that it should open the country, make roads through it, render it accessible, and thus bring the lands into markets?

Funds had been expended to implement the regulations that Congress adopted, and no one questioned the constitutionality of those actions. Certainly, no one objected to such activities in territories that had not yet achieved statehood:

But the public territory, so far as it remains unsold, is under the control of Congress after a State is established as well as before. It is as much the duty of Congress to take care of it, to sell it advantageously, and to do everything necessary and proper for the purpose of making such sales, after a State exists, as while the territorial form of government existed.

There is, it is true, a difficulty, rather theoretical than practical, springing up, or which, by possibility, might spring up, by the establishment of the State Government; that is to say, there might possibly be a difficulty about jurisdiction. It might be necessary, in some imaginable cases, to carry the road over lands belonging to individuals; in other imaginable cases it might be necessary to exercise some authority, resembling municipal authority, for the protection of the road.

These were, however, hypothetical cases:

No actual difficulty has ever occurred; and, as to the mere power of appropriation, there cannot be the slightest difference in the two cases, of States and Territories. There must, in each case, be a proper object – an object within the just power of Congress. And if this object exists, the right to expend money upon it is clear in one case as the other.

He thought that the issue of jurisdiction was why President Jefferson had deemed State concurrence important. If Congress did not have a certain power, “it cannot obtain that power by obtaining the consent of three or four States for its exercise. The power must rest, and it does rest, on the direct authority of Congress.”

Some opponents described the road as a local object and that “we, in effect, tax the whole people for the benefit of a part”:

But this may be said of almost anything. To be sure the road is local; and so is every fort, every harbor, every pier, every light-house, and every armory and arsenal in the United States; but they are not, for that reason, less within the just exercise of the powers of Congress, or less deserving its attention. The money, it is true, is to be paid out of the Treasury; but then the public lands are constantly paying money into the Treasury. Suppose it had been the practice to keep the proceeds of the sales of the public lands in a distinct fund, separated from the general moneys of the Treasury; it would seem plain enough that out of this fund any reasonable sum might be applied, for the purpose of making roads to and through the lands, for the purpose of bringing them into the market.

Senator Webster suggested another view that “exhibits, I think, the duty of Congress in a clear light.” After the sale of the public lands, settlers bought lots, felled the trees, began cultivation, and built their houses. He said, “there must be roads from house to house; there must be bridges over the streams; much cost and labor are demanded for these and similar neighborhood purposes.” The settlers bore these costs, because it had “not been thought proper or convenient, for general reasons, that the Government should be called

on to bear any part of this expense, though it may be a very heavy expense, as all know who are acquainted with the settlement of new countries.” Although the general government did nothing to advance “these smaller objects, the reason is greater that, on a larger scale, and in regard to larger and more general objects, it should make its just contribution.”

As for cost, he thought the Cumberland Road had “cost a great deal more than it need to have cost. It has been very badly managed.” He hoped future funds would be “more economically expended.” That said, he concluded:

But I am of the opinion that the work ought to go on; and, notwithstanding that the Treasury is not overflowing, and notwithstanding that the executive branches of the Government do not recommend it, nor include the expense in the annual estimates, I shall yet give my vote for the bill, and hope it may pass.

Senator John Calhoun of South Carolina addressed his colleagues on the subject. As a member of the House of Representatives, he had worked with Speaker of the House Henry Clay to pass the Bonus Bill as a way to fund internal improvements, but as discussed earlier, President Madison vetoed it on March 3, 1817. He had served as Secretary of War, during which he had submitted a plan for a system of such works. He had served as Vice President under Presidents Adams and Jackson, whose views on internal improvements differed, before resigning to return to Congress on December 12, 1832, to fill a vacancy in the Senate.

He had joined the Senate as a Nullifier, but now was a Democrat whose views on internal improvements had changed. Having aligned himself with the Jackson/Van Buren views on the subject, he had broken with Kentucky Senator Clay in bitter disagreement on several issues, including the American System his former ally advocated. Speaking after Senator Webster, Senator Calhoun began:

Mr. CALHOUN said that he was thoroughly satisfied that the General Government was wholly unfit to carry on works of internal improvement, and that in his solicitude to see the termination of the whole system he would vote for the amendment as a substitute for this bill by his friend from Alabama, [Mr. Clay.] He believed the offer was a liberal one, and ought to be accepted by the States interested. It went beyond the measure of real justice in the spirit of compromise and the hope that it would put an end to this distracting question and the system of which it constitutes a part. It was only in that view he could justify his support of the proposition. Indeed, he believed that the fund was entirely exhausted, and that the States interested in the road had no just claim to further appropriations or aid from the Government.

He disagreed with Senator Young’s argument that although the two-percent fund was exhausted, the general government had a contractual obligation, under the compact, to finish the road. If correct, Senator Calhoun said, this view “would oblige us to finish the road throughout its whole extent to the borders of Missouri. In giving this construction, he distinguished between ‘to’ and ‘toward.’”

He thought that addressing the issue was necessary; his opinion rested “on more solid ground”:

It was in fact too late to inquire into the true meaning of the compact in reference to the fund. Two points were certain. In the first place, that the Government is not bound to expend more than two per cent. on the road, and that the fund had been exhausted. And in the next place that it had been exhausted by the votes, in part, of the members of the States interested in that fund, and at the earnest solicitation of the States which they represent, and against the strenuous opposition of a large portion of the members from other parts of the Union.

He cited an argument from Senator Young’s speech. The example was a contractor who agreed to spend \$10,000 to build a house, and spent that full amount on the foundation. Would that fulfil the contractor’s agreement? “Yes, certainly, if that be the limit of the amount agreed to be spent, and if you stood by and insisted he should spend the whole sum he had engaged to do on the foundation; and such is precisely the present case.”

He also addressed an opinion stated by Senator Tappan of Ohio (not reported in the *Globe*). “He takes the ground that justice demands the appropriation; that in consequence of this and other improvements by the Government, we have received a much higher price for the land sold than what we could otherwise have got, and that the purchasers have already paid for the road in this increase of price”:

In answer to this it is sufficient to remark that the public lands, so far from affording an income, have not yet returned to the General Government the sum expended for them, as was stated and not denied in the recent discussion on the question of assuming the State debts; and that, of course, if the road has been thus far constructed, and if it is to be continued, must be constructed, at the expense of the commerce of the country, our only available source of revenue in reality.

The appropriation, he had shown, could not be justified on the basis of justice. “If, then it can be defended at all, it must be on the broad and general ground of expediency and constitutionality, on which every other work of the same description would stand.” He could not “assent to the ingenious attempt” by Senator Wright to distinguish the Cumberland Road from other similar works. Senator Wright had conceded that the two-percent fund was exhausted, but without that reimbursement provision in the bill, there would not be any distinction between the Cumberland Road and any other road. Senator Calhoun summarized the argument by saying that Senator Wright “undertook the Herculean task of proving that the retention of the provision charging the appropriation on that exhausted fund would, by some magic, make a material distinction between this and all other roads.” Senator Calhoun continued:

His intellect, he acknowledged, was too obtuse to perceive the difference; unless, indeed, it be meant that, if the provision were retained, it would have the effect to prevent the President, in the exercise of his approving power, from looking beyond the act itself, and ascertaining whether, in truth, the fund was exhausted

or not, and thus to compel him to sign an act which otherwise his oath to support the Constitution would compel him to veto.

He took an entirely different view. He believed it due to the President, to ourselves, and the Constitution, to present the act to him, if presented at all, in exact conformity to the state of the facts, so as to afford him a fair opportunity to exercise the high power vested in him by the Constitution over our acts, with full knowledge of all the facts; and if he had no other objection to the bill than the retention of this deceptive provision, as he regarded it, he would on that account vote against it. He held a strict adherence to truth, in every particular, to be among our most solemn obligations.

He viewed the bill as he would any other bill for internal improvements. He was opposed to it “if for no other reason, because the experience of a quarter of a century had proved that this Government was utterly unfit to carry on works of the kind. He would vote for the substitute, in order to get rid of the whole system.” He pointed out that according to the Treasury Department, the government had spent \$18.6 million for internal improvements, an amount he increased to \$25 million to include interest. “And what do you suppose has been the aggregate income of the Government from this immense expenditure, equal to one fourth of the debt of the Revolution?” The full profit amounted to \$173,620, “and that from a single work – the Louisville and Portland canal.” That deficit between expenditure and profit was only one example of “wasteful and thoughtless expenditure”:

It has been stated in debate, and not contradicted, that it has thus far cost \$18,000 per mile, a sum at least three times as great as a good road of the kind may be made for, and much greater than what a substantial railroad ought to cost.

Moreover, the Cumberland Road was going to be superseded in 10 years by a railroad “and will prove worthless, like all our other projects of the kind . . .” Given the uncertainty of navigation on the Ohio River in summer and winter, a parallel railroad was a necessity. As for the Cumberland Road, “when made, this, which costs so much and is the cause of so much contest, will be no more than a mere neighborhood road, being used to drive stock on, and not good for that.”

To illustrate the “wasteful and thoughtless” nature of internal improvements by the general government, he pointed out that Georgia had received \$17,000, Tennessee \$27,000, but Kentucky, South Carolina, and Virginia had received nothing:

The truth is, the expenditures appear to have been governed by importunity and political influence, with little or no regard to justice or utility. A system so conducted must lead to discontent, and be productive, politically, of mischievous consequences. Need we go further than this very instance to prove the truth of this assertion? Can we doubt that there is, in reality, a large portion of this body discontented with so large an annual draft on the Treasury for a single work as local in its characters as a thousand others that may be named? Nay, further; can we doubt that there is a great majority of the body of both parties opposed to it

both on the ground of expediency and constitutionality, but who feel themselves compelled, in a measure, to vote for the appropriation because of its supposed bearing on a certain question which now agitates the country which he did not deem it proper to name here?

According to his mode of thinking, those who represented the States immediately concerned had the greatest interest in terminating the whole system. They were placed, in his opinion, in a state truly awkward and embarrassing; and for himself, he would rather that his State should never receive a cent than to receive double the amount contained in this bill under the circumstances under which it would have to be voted.

It was time to “awake from our long slumber”:

We have, for the last fifteen or twenty years, been wasting the resources of the Union on innumerable objects of internal expenditure – roads, canals, harbors, an overgrown eleemosynary pension list, never intended to be placed, by the Constitution, under the charge of this Government – while we have been grossly neglecting the great objects for which the Government was really instituted. It is high time that this internal bleeding, which has been wasting the strength of the Government, should cease, and that we should direct our attention and resources to objects really intrusted to the Government and for which it is responsible. He was no alarmist; he did not believe that war would grow out of the boundary question.

He was referring to the boundary dispute regarding the northern boundary of the Oregon Territory. He thought that Great Britain, when it “came to a full and calm consideration of the subject,” would agree to the view of the United States (known by the slogan: “Fifty-Four Forty or Fight”). Although he did not expect war, “he could not look at the general state of the world without fearing that the elements of strife were daily multiplying and gaining strength, and it was time for us to economize our resources, and direct them to the point where they would be felt in the hour of trial.” He was particularly concerned about maritime dangers and the importance of strengthening the U.S. Navy:

He would be prepared to show, on the proper occasion, that it would be in our power, by strict economy, and withholding useless, profuse, corrupting, and unconstitutional expenditures, to put on the ocean, at no distant period, and without increase of burden, a force that would give to us the habitual command of the adjacent seas against any force on our coast

The first step is to put a stop to these internal expenditures, at the head of which stands that which is the subject of this discussion. Till it is stopped this system cannot be arrested; nor can we have any assurance till then that it will not return on us in its full vigor. Other portions of the Union will not stand by and see a part receiving all the benefit of the system, be the pretense what it may, without struggling to participate in its advantages.

The Senate adjourned without taking a vote on the question.

On April 2, the Senate again took up the substitute proposed by Alabama Senator Clay.

Senator Albert S. White, an Indiana Whig, “addressed the Senate at length in favor of the bill, and in opposition to the amendment,” but the *Globe* did not report his remarks. Senator Henry Clay responded, but his remarks also were not recorded.

Senator Wilson Lumpkin of Georgia, a Democrat, said “many considerations have inclined me to give a silent vote on this bill.” It was a favorite of many of his personal and political friends:

But, sir, after what has fallen from the Senator from Indiana [Mr. White] I feel myself called upon at least to correct his impressions and statements in regard to matters which he has thought proper to introduce in connection with my own State It was to me a matter of surprise that the Senator should attempt to aid the passage of Cumberland road bill by stating that the Federal Government had expended upward of \$6,000,000 to aid Georgia in getting rid of her Indians, and other purposes of liberal expenditures in aid of that State.

He thought that perhaps Senator White’s age explained why he did not understand “things which transpired before his birth; and he has neglected to make himself acquainted with the history of the transactions upon which he has attempt to enlighten the Senate.” (Senator White was born in 1803 and was in his mid-30s at the time.) Senator Lumpkin, who had been born in 1783, knew that all of his colleagues, except the Senator from Indiana, knew the facts, but he wanted to enlighten Senator White:

Yes, sir, Georgia has given much to build up and strengthen this great confederacy of States, while she has asked nothing, received nothing

Georgia had ceded land that became the States of Alabama and Mississippi, in return for which the State had received a “mere song, sir - \$1,250,000, a promise to settle certain fraudulent claims against the State, and the more important consideration of a promise to extinguish the Indian claim to all lands within the limits of Georgia, abridged as they were by that cession.” The general government had demonstrated bad faith in complying with these promises:

We have, sir, but just got rid of our Indians; much of our territory is still an unimproved, unsettled wilderness; whereas, if this Government had been faithful to its compact with Georgia, we should have had a population and improvements proportioned to our extensive limits and productive soil.

Could, Senator Lumpkin asked, the Senator from Indiana think he would benefit the Cumberland Road by trying to leave an impression “upon the minds of Senators that there is the slightest similarity between this Government paying a debt to Georgia and taking money from your Treasury to make a road in the States to be benefited by this

road?” Senator Lumpkin said he had in his hand a report from the Treasury on expenditures for internal improvements since 1803, totaling \$25 million:

And, sir, out of this immense sum what amount would you suppose Georgia has received, out of \$25,000,000, \$17,000, applied to the removal of obstructions in the Savannah river. Yes, sir, you have the amount, all told. Now, sir, the new State of Indiana, the Senator’s own State, has received considerably upward of one million of this vast expenditure. Under these circumstances, sir, can that Senator expect to stand here unrebuked when he attempts to make comparisons between Georgia and Indiana in reference to sharing the spoils of the public Treasury in a scrambling system of internal improvement?

Georgia had never sought special favors from the general government. “Equality, justice, a strict adherence to the Constitution, is the motto of Georgia.” The State had sometimes been “ridiculed for our constitutional scruples”:

But, sir, ample and conclusive objections to my mind may be found against a further prosecution of this Cumberland road by the Federal Government, upon the “general welfare” principle; and, sir, should I hereafter, as I possibly may, submit my remarks to the Senate on this subject, I will meet the friends of the “general welfare” school on their own ground, and endeavor to show that it is inexpedient, impolitic, and unwise, further to prosecute this work.

He recommended that friends of the road “come to a compromise,” namely to accept the proposal by Senator Clay of Alabama, “proposing to give the States through which this road passes two per cent. of the net proceeds of the public lands hereafter accruing from the sales in those States.”

He pointed out that the Cumberland Road appeared to be losing favor in the House of Representatives. “Sir, I think it will not require many more such speeches as we have this day heard from the Senator from Indiana [Mr. White] to seal the fate of this Cumberland road.” All the speeches in opposition to appropriations for the Cumberland Road that he had heard for the past 25 years “have not tended so effectually and fully to convince me of its great evils as has the speech of the Senator this day, intended for its support.”

In view of the \$6,777,739.82 already expended on this road, why talk about the two-percent and three-percent funds that these States are entitled to under the compacts? “No one will hereafter be deluded by thus mystifying this subject.” It was equally “fallacious and futile” to try to make it appear that other States had received like benefits. He concluded:

All such attempts will have to stand upon a similar foundation to the one this day attempted to be imposed upon the State of Georgia, and which I have felt myself called upon to expose and refute.

Senator William H. Roane, a Democrat from Virginia, said he normally was “extremely reluctant” in Senate debate and had never “opened my lips” on the subject of the Cumberland Road. However, Senator White’s “very earnest, fervent, and almost personal appeal” rendered it proper that Senator Roane “promptly and immediately add a few brief words to the more potent monosyllable which it will very soon become no less my pleasure than my duty to utter against the passage of this bill.”

Apparently, Senator White thought the bill would appeal to Virginians because part of the road went through their State:

On what principle, on what grounds, by what precedents, am I invoked to give aid or countenance to this Cumberland road bill? Has it heretofore received the countenance and support of that State? Have my predecessors in this Chamber been advocates or patrons? If so, I am unacquainted with the fact.

Geography and the principles of engineering between Cumberland and Wheeling required “that the road should seek a passage to the Ohio through a small portion, a mere corner, of the territory of Virginia.” Only about 14 miles were in the State:

What great favor does this circumstance confer on that State? What great interest can it excite in Virginia or her citizens? And what obligation should it impose on her representatives to vote annually large sums of the national treasure toward extending its progress through the boundless West?

True, as Senator White had stated, the city of Wheeling was a flourishing city. But neither its growth nor “any of the other cities which have sprung up, as if by magic, on the banks of the Ohio and all our other western rivers, owe their rapid growth and unexampled prosperity to the Cumberland road.” If they had relied entirely on the Cumberland Road, they would be struggling economically. They owe their growth partly “to her almost unequalled water power, but mainly to the mighty power of steam, which had given navigation to her noble river, and machinery to her multiplying workshops.”

Senator Roane also commented on the invocation of President Jefferson to support continued appropriations for the Cumberland Road. It was true that some 40 years earlier, President Jefferson had sanctioned, perhaps patronized and fostered the road, “but I am certain that he would never have done so could he have foreseen its consequences, direct and collateral.” He never dreamed of its present length or that it would “become an annual sponge or perpetual drain on the public Treasury.” He could not have foreseen the coming of “safe, easy, rapid, and most profitable” navigation along the Ohio River. At the time, he did not have the option of steam as an alternative for achieving the goal of populating his “‘favorite West,’ as he was wont to call that region.” If he had known about the advances in transportation since the start of construction of the road, “it seems clear to my mind that . . . we should never have heard of this ‘Cumberland road,’” which was becoming a mere neighborhood road. Nearly all who reach the Ohio River, “abandon the delightful coaches of this magnificent road and pursue their journey in steamboats whenever the river is navigable”:

Mr. President, this “Cumberland road,” which was at first but a little serpent, is now fast growing to be a might anaconda, elongating itself through an empire, and involving States in its griping [sic] and inextricable folds!

When and where would it stop? “Where is to be its terminus, or is it to be interminable?” Would it stop at the Rocky Mountains or continue across “the delightful plains of Oregon to the bright shore of the great Pacific ocean?” And what was to stop it from returning to the East on a “new and circuitous route through other States?” He concluded:

I, sir, for one, am ready at this moment to stop the “progress of this evil” and if we cannot “kill the snake,” let us “scotch it.” I am against this bill, Mr. President, because in my soul and conscience I do not think we have power under the Constitution to pass it. I am against it because I think it unjust, impolitic, and inexpedient to pass it; and if it was both constitutional and expedient, I should be against it because of the present meager state of the Treasury, and the disturbed condition of the country both in its domestic and foreign relations.

Senator White, a member of the Committee on Roads and Canals as well as coming from a State interested in the matter, felt the need to reply to the “remarkable speech” of Alabama Senator Clay, “who seems to be among the most zealous opponents of this measure.” After asking for that Senator’s particular attention, he asked, “Did I understand the Senator correctly as saying that this road is local in its character because it does not point to Mobile or New Orleans?” Senator Clay replied that “he did not place its unconstitutionality on that ground, but that it did not terminate either on the sea-board or on the frontier.”

Nevertheless, Senator Smith replied on the “remarkable doctrine” that constitutionality of the road depended on its termini:

As this road is to terminate at a point connecting itself with the great thoroughfare of commerce in the Southwest, it is unconstitutional; whereas, if it had connected with the frontier or the Atlantic, it would have been constitutional.

Senator Clay of Alabama responded that “he had contended that the work was local, as it was confined to three or four States at most in its benefits.”

Senator Smith questioned the premise of Senator Clay’s theory that the road was unconstitutional because its benefit accrued to only a few States. “Why, sir, he must sever the work at the Ohio River, and take one end or the other of it – either the eastern or the western section – and even then his position is untenable.” Because he surely would not sever the eastern portion that President Jefferson had approved, he must refer to the western section through Missouri “and ultimately, I hope, through Arkansas.” He asked, “am I to understand that the road, in the contemplation of the Senator, west of the Ohio is unconstitutional, and east of the Ohio is constitutional.”

The *Globe* reported:

Mr. CLAY, of Alabama, again said he should despair of making the Senator from Indiana understand him. He had contended for no such doctrine as that one end of the road was constitutional and the other end unconstitutional.

How, Senator Smith asked, does the Senator from Alabama consider it a local road? It ran through seven States from Maryland into Missouri and “it is contemplated to continue it through the eighth.” He continued:

He had referred to the veto message of General Jackson on the Maysville road bill. I did not expect to hear the Senator refer to that document, as he voted for that bill both before and after the veto, as I understood him as admitting to my friend from Illinois, [Mr. Young.] But, sir, let me once for all say to those who recognize the doctrines of that veto message, here and elsewhere, that for one I am entirely willing to test the question before the Senate by doctrines of that document; I mean upon the question whether this be a local or a national work. Sir, if the Cumberland road is not a national work, where, in the name of Heaven, can you find one? A work that connects, as it were, two continents, the Atlantic with the great valley of the Mississippi, crossing the American Andes, and uniting the States and people of the Republic by a chain that will remain for ages a monument to the wisdom of our statesmen, and which may, like the Appian way of Rome, outlive the liberties of the country, and remain a memento of our nation as she was in the pure days of the Republic.

Senator Smith observed that the Senator from Alabama was not alone in suggesting the western portion of the road was local, and “almost useless,” compared with the portion east of the Ohio River. If Senator Smith had a choice of which end of the Cumberland Road to eliminate, he would without hesitation eliminate the eastern portion to Cumberland:

I would not hesitate a moment in selecting the eastern portion . . . for this obvious reason: you have a number of avenues, roads, and canals, from the Ohio river to the Atlantic beside the Cumberland road, when it is a fact known to all that there is but the single thoroughfare for the whole travel, stages, mails, and emigrants, west from the Ohio, running directly through these great States; nor could it be maintained for a moment that the Ohio river would answer as a substitute for the road, even if it were admitted that it was at all times navigable, as the road runs through the center of the States, about equidistant between the Ohio and the Lakes, say at an average of near one hundred miles from the Ohio.

He also challenged the view that the road was of value only to the four States:

It is beneficial to the whole; if it is not, what becomes of your breakwaters, light-houses, fortifications, harbors, custom-houses, and improved rivers? They are infinitely more local than this work, and yet who ever thought of confining their benefits to the particular State in which they are located?

If, he wondered, the benefits were confined to the four States the road passed through, would that justify ending appropriations? He answered:

These four States contain a population greater than was contained in the Union at the period of the Revolution. They have paid into the national Treasury over seventy million dollars for public lands alone, beside their equal proportion of your imposts. And are they to have no return? Are they to be ostracized by this new-born policy of the present day?

He pointed out a project in North Carolina:

I would now like to hear some gentleman who had made this matter his study – and I see several in the Senate – tell me why it is that you can constitutionally clear out and improve, at the expense of the Government, under the commercial [sic] power, Tar river, in North Carolina, where the whole commerce may consist of a passage, in a wood boat, of a few barrels of tar or turpentine, and a return cargo of a barrel or two of salt, when, under the same power, you cannot construct or complete the Cumberland road, over which, in addition to the great mails, (which are strangers at Tar river,) there are more actual commercial operations in one day than there are on the river I have named in a year.

He had selected that project because the State's two Senators (Bedford Brown and Robert Strange, both Democrats) denied that appropriations for the Cumberland Road were constitutional:

Let Senators read me the clause in the Constitution that relates to the regulation of commerce carried on in boats or vessels and excludes that carried in wagons. Can it be possible that as soon as a box of goods leaves the boat and enters a wagon it changes its constitutional relations?

He did not intend to go fully into the constitutional question “until I hear gentlemen who admit the commercial power to make harbors and clear our rivers, in which I heartily concur, draw a distinction intelligible to me against the power in this case.”

Another argument against the bill, he said, was that the two-percent fund was exhausted. He did not dispute the fact, but “when I have admitted all this, I contend that, so far as the merits of the question are concerned, I have admitted nothing against the bill.” The government had begun the road, and agreed to extend it to the Mississippi River “with the avowed object of facilitating the settlement of the public domain,” thereby aiding the Treasury:

. . . and if, by such location, as I contend, the Government held out to the purchasers of her lands the assurance that the road so located by her should be finished, she cannot now abandon the work without a gross violation of public faith, nor without doing the greatest injustice to the people who have purchased, and improved at high prices the land on the line of the work, relying on the completion of it in good faith; nor can the Government now abandon the work

without doing violence to the States through which it runs, upon general principles.

The States had located their own roads to serve internal needs, but the general government had located and intended to construct the Cumberland Road “upon a scale of expenditure far beyond anything that a State would have contemplated; hence the great injustice of abandoning this national work to be completed on a scale ruinous to the States, and about which they were not consulted; nor are their means adapted to it.”

Senator Smith said the Senator from Alabama contended that the compacts committed the general government only to the extent that the two-percent fund permitted, at which point the commitment was discharged:

This position I wholly repudiate. I contend that the General Government was bound to make the road, and that the two per cent. reserved by her was to aid her in the completion of the work, and I rely upon the following facts to sustain me.

The road was part of the “original land policy of the nation” as owner of the territorial land. “It was commenced and in progress long before the existence of the compacts between the States of Indiana, Illinois, and Missouri, with the General Government, and was not therefore prompted by these compacts.” Shortly after locating the road in Ohio, the government had reduced the price of land from \$2 to \$1.25 per acre “and made large grants for various purposes without the consent of the States”:

The States were never consulted in relation to either the route, scale, or location of the work, but, on the contrary, the Government laid down the scale and prosecuted the work upon her own plan, wholly independent of the States, which certainly would not have been the case had it been understood by either party that the work was to be abandoned whenever the two per cent. fund would finish the work; and it was upon that principle the Government agreed to make it, and proceeded without consultation with the States in relation to the scale or location of the work, as the States had nothing to do with that matter.

He summarized his thoughts on this point:

I hold that, viewing it merely as a trust question, a faithful discharge of that trust required the Government to appropriate the whole fund that would have arisen from the sales of the whole of the public lands at the prices fixed at the date of the compacts to the completion of the work, and if she reduced the price of the land, made donations or grants for any purpose whatever, laid out the work on a scale too extensive for the fund, withheld appropriations until they were consumed in repairs, or otherwise improvidently dissipated the fund or defeated the object, it was at her peril and at her own expense, and is no answer to the States when they ask for the appropriation to complete the work.

One of the repeated arguments involved the condition of the general Treasury:

I have met this argument more than once during the discussion on this subject in its various stages, and I can do little more now than repeat what I have before said; and that is, that I will not accept of that plea as a defense against the charge of a refusal to make this appropriation. Last year the same cry was raised; the bill passed the Senate, and fell in the House. Notwithstanding the cry, then, I see the expenditures of the Government last year were \$31,815,000, not a dollar of which was appropriated to this work. Where did it go?

. . . Will not objects of expenditure be always found sufficient to drain the Treasury, in exclusion of this work, if we are to be put off with that excuse? As one of the friends of the work I demand that it shall participate in your expenditures. If economizing is to be the order of the day, I am willing that our great work may bear its due proportion of the reduction of expenditures with the other objects to which the national expenditures have been directed but I protest against its exclusion.

He understood how hard it was to overcome party beliefs, but he hoped friends of the road would rise above party to “sustain that policy which was commenced by Mr. Jefferson, and prosecuted through the succeeding Administrations, maintain the national faith, and give no just grounds of complaint to those who have relied on us to complete this great national work.”

Senator Clay of Alabama made “some remarks in reply,” but the *Globe* did not report them.

Senator Alexander O. Anderson, a Tennessee Democrat, said the Clay substitute amendment had been offered as a way to “put this perplexed claim forever at rest.” If he believed that would be the result, he would “cheerfully unite with those gentlemen.” He desired nothing more than that “some plan could be devised by which this important and exciting subject could be surely and lastingly severed from us.” The substitute “would only end as a mere gratuity, and the practical result would be, if they were to accept your proposition, the condition would not be felt to be binding as to anything except that they should merely take into their own hands the application and expenditure of a certain amount of money.” And after the funds involved were exhausted, friends of the road would be back for more:

We ought to remember that a massive population, growing in numbers, and spread over a vast territory, occupying four States of this Union, will continue to feel that their interests have entered into the success of this road; and, sir, you have no alternative but to meet the question face to face.

He had voted against the original Clay Amendment partly because it was a strategy for ending debate on the subject:

We have, sir, no safety in mere strategy. Ours is a cause which must be fought upon the basis of principle or not at all. We have no allurements to offer. If we are defeated we must renew the contest, discuss our principles, enlighten the

public mind, and rely upon it, in the end, a free and thinking people will abide by their Constitution and return into the Halls of Congress the true expression of their opinions. As to this amendment, you have nothing to hope from it. It settles nothing, and I shall vote against it, and against the bill because it is unconstitutional.

The Senate then voted, 12 to 26, against Senator Clay's substitute amendment.

Senator Felix Grundy, a Tennessee Democrat, pointed out that the season would be far advanced before the bill could be enacted and, as summarized in the *Globe*, indicated that "as the amount appropriated could not be profitably expended the present season, he moved to reduce the sum in each State from \$150,000 to \$100,000." Senator Preston moved to amend the amendment by reducing \$100,000 to \$75,000. The Senate agreed to the Preston Amendment, 23 to 17.

The Senate was about to vote on engrossment of the bill for a third reading, but Senator Henry Clay said he wished to address the Senate on the bill. With the day at an end, the Senate adjourned.

The Senate took up the subject again on April 3, this time on the bill itself.

Senator Samuel L. Southard, a New Jersey Whig, addressed the Senate "at length," first, in opposition to the bill. The *Globe* summarized his remarks. He firmly believed that Congress had the constitutional power to appropriate money for internal improvements. However, the Administration had not recommended the appropriation or included it in the Treasury's estimates. Therefore, "he, for one, was not willing to subject himself, and the party with which he acted, to the charge of extravagant appropriations, after the lecture they had received from the Executive on the subject of economy." Regarding the section of President Van Buren's annual message on economy in public expenditures, Senator Southard "denounced it as the most impudent and the most insulting lecture that has ever been given to any Congress by any man who has ever honored or dishonored the Executive Chair."

The next speaker, Kentucky Senator Clay, told his colleagues that he had always believed the Constitution conferred the power on Congress to appropriate funds for construction of internal improvements. There was, however, a caveat:

It was only when it could be done without inconvenience to the Treasury that he had been willing to concur in appropriations to that object. Of late years, considering how much the States have done for themselves, and how much had been contributed by the General Government in aid of them, under the act distributing surplus revenue among them, he for one was willing to waive the exercise of the power in respect to canals and roads, especially if a law could be passed to distribute the net proceeds of the sales of the public lands. They would supply a fund, in perpetuity, abundantly sufficient for all desirable objects of internal improvement.

He turned, as he had in recent years, to President Jackson's veto of the Maysville and Lexington turnpike road bill, describing the turnpike as "but a section of one arm of the Cumberland road." As a result of the veto, the Constitution as he understood it had been suspended throughout the country, except in Ohio, Indiana, and Illinois, "as to the construction of artificial roads":

We have had, in effect, two Constitutions of the United States, one for these three States, and another for the rest of the Union. For I repeat, what I have before said, that the proposed appropriations to the Cumberland road are wholly indefensible but upon the ground of the existence of a general power in the Constitution authorizing works of internal improvement.

He understood why Senators from those three States supported the road and their contention that the United States, "as a great land proprietor," opened the road to enhance the sale of the public land. "But no one can, I think, allege that if that were the object a road so costly as this would be made, or that it has been in fact constructed with that view."

As a resident on the south side of the Ohio River, he had a hard time understanding why appropriations for this road to the north of the river were constitutional, while appropriations for a road to the south were not:

We have felt the injustice of being taxed to supply the means of constructing the roads of others without any reciprocal taxation of them to assist in making our roads. This inequality has made me heretofore, since the veto of the Maysville and Lexington turnpike road, vote with great reluctance for appropriations for the continuance of the Cumberland road. That reluctance was increased by a knowledge of the fact that the very States which were thus exclusively benefited, constantly maintained the Administration which originated and inflicted this inequality. Nay, more; a majority of their delegations had been always opposed to a distribution of the proceeds of the sales of the public lands, by which other States, as well as themselves, might have acquired the requisite funds to construct their works.

After the Maysville road veto, he thought, perhaps he should not have voted for appropriations to continue the Cumberland Road "until the general power was restored, or an equivalent obtained." Nevertheless, he had done so, and would continue to do if it were possible to provide the funds without going into debt and if the Van Buren Administration had recommended the appropriation. Not only had the appropriation not been included in the estimates, but President Van Buren had urged economy in appropriations, and had intimated he would use the veto, "which, instead of being a power of occasional and extraordinary use, has been too frequently exercised."

As it was, the Treasury was "literally empty," and would have to borrow money to meet expenses. Even so, the Senate was being asked to appropriate \$225,000 that would have to be borrowed "against all the motives to economy which exist." Friends of the Van Buren Administration had unjustly accused the "Opposition" of swelling the budget with

extravagant spending. If the Senate approved the bill, “shall we not, so far as it goes, give color to the accusation to which I have referred.” If the Democrats wanted to pass the bill, he said, they could do so in both Houses without the Whigs.

Another issue raised his concerns about the bill. He described “the necessity, which I think exists, for a thorough investigation into the causes of the extraordinary expenditure upon this road in those States, and especially in Indiana.” He pointed out that the road had cost \$13,000 or \$14,000 a mile, with estimates that completing the work to the Mississippi River would cost \$7 or \$8 million. “Now, sir, this astonishing expenditure requires a most rigorous examination.” He thought that use of the road prior to adding the macadam layer would result only in “a trifling expense compared to the original cost of grading it”:

There must be some other cause of the enormous expenditure upon this road, and before we make further and lavish appropriations to that object that cause ought to be probed and certainly and carefully ascertained.

He pointed out that since the veto, Kentucky had built between 400 and 500 miles of macadamized road “at an average cost not exceeding, I believe, \$6,000 per mile.” He asked why a road north of the river cost twice as much per mile as a road to the south. “And that, too, notwithstanding the difference in the character of the labor on the two sides of the river,” apparently referring to the use of slave labor on the roads. Based on experience in Kentucky south of the river, only half of the \$8 million estimated for completing the road to the north would be needed “to construct the whole road if not a stroke of work had been executed upon it.”

In view of these concerns, he could not vote appropriations for the Cumberland Road, regardless of what he had done in the past. “I think it will be better to remit the whole subject to the administration of President Harrison.” (Here, Senator Clay was assuming, correctly as it turned out, that General William Henry Harrison would win the presidential election of November 1840.) Once he takes office on March 4, 1841, an investigation of the road would be possible. And, because future President Harrison was a Whig who lived in Ohio, “his whole life with the interests of the three States more directly interested in the road will secure a just and liberal patronage.”

Senator Clay concluded:

Whether that patronage should be extended by a direct grant from the public Treasury, by a division among all the States or the proceeds of the sales of the public lands, or by other means, will then be fit subjects of inquiry. And we may rest in perfect confidence that the Administration which, with the aid of the people, and with the blessing of God, will commence on the 4th day of March in the year of our Lord 1841, will do in respect to this road whatever may be demanded by the interests of the particular States and of the whole Union.

Senator Smith, the one-term Whig Representative (1827-1829) who had joined the Senate in 1837, said “he rose under feelings of a character that he had not language to

express.” He had listened to Senators Southard and Clay “with deep mortification and regret”:

I hope I need not point to my short political life to prove that I have been the friend of those Senators through evil as well as through good report. I have felt for them all the devotion which their brilliant career, and especially that of the Senator from Kentucky, was calculated to produce in the mind of a young and ardent politician of the West.

Being from Indiana, Senator Smith had an “all-absorbing” interest in the Cumberland Road and had “looked up to and advocated the high pretensions of the Senator from Kentucky, on more than one occasion, to the highest office in the gift of the American people.” In doing so, “I have with pride and satisfaction pointed to him as the champion of this work.” He had “fondly hoped” that Senator Clay and Senator Southard were still “firmly enrolled among our western friends; but in this I have been doomed to bitter disappointment.”

Had their statements come from any other part of the chamber, Senator Smith said, he would have remained silent:

But when two of the former friends of this measure, so distinguished as the Senators to whom I am replying, all at once bound from their original position and come out with set speeches against this road, I feel that I should be recreant to my duty were I to suffer the interests of my State and the wishes of her people to yield to any personal or political considerations whatever.

(Regarding the reference to “distinguished,” Senator Henry Clay is well known today from numerous biographies and for his role in countless histories for his work in the first half of the 19th century on a range of issues, including his role as a compromiser on slavery to keep the country united, and as a founder of the American System and the Whig Party. Senator Southard is little known today but had a distinguished career. As an attorney, he served in the New Jersey State legislature and on the State Supreme Court. He served as Secretary of the Navy under Presidents Monroe and Adams (September 16, 1823-March 4, 1829), as Governor of New Jersey (October 26, 1832-February 27, 1833), and as United States Senator starting on March 4, 1833. All of these career highlights were known at the time of Senator Smith’s reference to Senator Southard as distinguished.

(In later years, Senator Southard became President pro tempore of the Senate on March 11, 1841, a position that gained special importance following the death of President Harrison. With Vice President John Tyler elevated to President, the Vice Presidency remained vacant, meaning that the President pro tempore was second in line to the Presidency, after only the Speaker of the House, should President Tyler leave the office before his term ended. Senator Southard left the Senate and his position as President pro tempore on May 31, 1842, for health reasons and passed away a month later on June 26, 1842.)

Never in his life, said Senator Smith, had he been called upon “to perform a duty which has given me so much pain” as does replying to Senators Clay and Southard, but he felt obligated to do so. In responding, he would exercise the “the freedom and candor” of a Senator from “a free and independent State.”

Senator Smith began with their argument that the appropriation would add to the national debt, which they were opposed to doing. He compared their refusal to vote for the bill on that basis with past actions:

I understand that both those Senators voted for or supported the Cumberland road when there was a national debt of over one hundred and fifty million dollars upon the country, and when it required immense sums annually to pay the interest on that debt And can those Senators now satisfy themselves that they can place their votes on such grounds? It seems to me that this is an after-thought, as the fund is already raised, and the money will be expended at all events.

He recalled what had happened in 1839:

I am unwilling to accept this plea to our application. The same cry was raised last year, and the bill fell; no money in the Treasury. And so long as the West can be put off with this plea, so long as they can be tickled with the idea of obtaining an appropriation when there is money in the Treasury that there is no other use for, just so long as we shall have the consolation of aiding in filling the Treasury from the purchase of the public lands, and the equal portion we pay in the shape of duties, and in return receiving the answer to our applications, “The money has all been expended, and we cannot let you have a dollar.”

He had heard that argument from other Senators, including Senator Clay of Alabama, but did not expect to hear it from the Senator from Kentucky or the Senator from New Jersey:

Sir, it may do for the enemies of this work who are the friends to expenditure elsewhere, but it sounds badly in the mouth of a friend of the Cumberland road. The tendency of this doctrine is to exclude that great national work from any participation in the expenditures, and to encourage other objects, to its total exclusion now and forever.

The fact was, Senator Smith said, that the Treasury had been replenished by issuing a note of \$5 million. The Senator from Kentucky had voted against the bill authorizing the note because it was an Administration bill. “Suppose it to be so, then the argument is, because the Administration have filled the Treasury in a manner exceptionable to the Senator, he will abandon the Cumberland road, his own darling child.” And he will do so even though he knows that the money will be spent on other activities instead of “this cherished work.” In other words, he prefers “every other object of expenditure that may be selected by the Administration to this great western work.”

Similarly, Senator Southard, who “set out with the strongest declaration of friendship for the Cumberland road,” decided “that none of the objects of appropriation within the estimates can be dispensed with.” Therefore, “he is willing to abandon this work in its dilapidated situation, and appropriate the whole revenue of the nation to every other object suggested, to its total exclusion.” These reasons, Senator Smith said, “have operated on their minds very differently from what they have on mine.”

The two Senators also pointed out that the Van Buren Administration has not asked for the appropriation, “or they would have been disposed to have granted it.” Senator Smith was surprised by this argument. “I did suppose that those Senators were the last men in this body who would yield a tithe of their own judgment to the request of the Administration.”

They also were concerned the Administration would charge them with prodigality if they voted for the bill:

I have been heretofore unwilling, Mr. President, to believe that either of those Senators could be deterred from doing what he believed to be right for fear of censure from any quarter, much less from the Administration and its friends. I hold that Congress is an independent branch of the Government, and, while it shall look to the estimates from the proper Department for information, it should act on independent principles.

Next, Senator Smith turned to Senator Clay’s question about the cost of the road – twice as much as Kentucky’s turnpike road:

I will tell him, at least in part. The country through which the Kentucky roads have been constructed is very different from the route of the Cumberland road. Rock is found on their lines in abundance, the soil is dry, the width and dimensions of their roads much less, the travel is kept off of them until they are finished, their appropriations have been timely made in sums sufficient to insure economy in construction; while the Cumberland road passes over a flat, alluvial country, from Columbus to Vandalia, without rock for considerable distances, and cut up the whole time by immense travel that is thrown upon it in its unfinished state. The appropriations have been made at so late periods in the season that a great portion of the sums have been required to put the road in as good repair as it was the preceding year. But, sir, admitting all the prodigality and waste of which the Senator complains in the expenditure of the fund under the compacts, I put it to those Senators, as lawyers and statesmen, to say whether it lies in their mouths, as the organs of this nation, to say that such prodigality has been committed.

The Senators admit that the General Government was a trustee for the benefit of the States west of the Ohio to the full extent of the trust funds reserved by her under the compacts to make this road, and as she was bound to expend it in good faith upon the object intended, it does not lie in the mouth of such a trustee to point to her own waste of the fund as an excuse for not fulfilling the trust. I have

answered this argument before at large, but as it was put forth by the Senator from Kentucky, in a more imposing aspect, I have felt called upon to notice it,

As he neared the end of his speech, Senator Smith said he had, “to my own mind at least,” shown “the sandy foundation” on which the two Senator had based their views.

From the start of the session, he knew “the battle was to be warm and the struggle desperate to defeat us.” He had hoped that, if the bill were to fail, “it would be left to its enemies alone to deal the fatal blows.” He had hoped “to be spared the mortification of seeing it fall by the hands of its former friends, acting in concert with its former enemies.” He concluded:

I repeat, I thank them for their former friendship in our interest, and part from them now with deep mortification and regret. Sir, let the vote be taken, and if it is the will of the Senate to defeat the bill, and deny us the appropriation, we must submit to your power, but will never admit your justice, or surrender our claims until justice is done us.

Senator Young added his thoughts on the views expressed by Senators Clay and Southard. He had thought that when the appropriations in the bill were cut in half, “it would have been permitted to pass.” He scoffed at the idea that a national debt of \$5 million was sufficient to kill the appropriation. “We had seen votes appropriating larger sums when the Treasury was in a much worse condition than at present. If, as was likely, the bill was to fail, “the States interested in it would soon be enabled to present it under more potent auspices, if not here, at least in another wing of the Capitol, when he trusted they would be able to make their rights felt and respected.”

The Senate then voted on engrossment of the bill for a third reading. By a vote of 20 to 22, the decision was in the negative. “So the bill was lost,” as the *Globe* put it. Senators Clay of Kentucky and Southard joined Senator Clay of Alabama in the nays. Senator Buchanan joined Senator Webster in voting yea.

Continuing Efforts in 1840

Although prospects for an 1840 appropriation for continuing construction of the Cumberland Road were not good, supporters had not given up hope. One vehicle for an appropriation was the annual civil and diplomatic appropriation bill.

On April 17, with the House organized into the Committee of the Whole, Illinois Representative Reynolds, a Jacksonian who identified himself now as a Democrat, entered into a lengthy discussion in the Committee of the Whole on the principles of the two parties. He discussed many aspects of the civil and diplomatic pending bill, but before closing, presented another subject for the committee’s consideration:

Mr. Chairman, before I conclude my remarks, I will present one other subject to the consideration of this committee, and to the people in the State of Illinois whom I represent.

The continuation of the Cumberland road is of the utmost importance to the people that you and I represent, and some of them have desired us to address them on the subject. I consider it my duty, in the relation in which I stand to them, to give them a plain narrative of the life and death of the Cumberland road.

He realized that people who did not reside in the States involved had “very little interest and think we take too much.” However, the people in the four States west of the Ohio River “are identified with it, and therefore they are extremely anxious that it should be continued.” This support was reflected in resolutions adopted by the General Assembly of the State of Illinois. On behalf of these people, he was “extremely anxious that this appropriation should be made.” In fact, he knew his colleagues recalled that “I urged this measure on their consideration to such an extent that my exertions became rather offensive”:

I will still vote for the appropriation on any bill, or in any shape which it may assume, and I pretend not that I have done more than my duty, or more than any of its friends.

He recalled that the House had voted, 88 to 109, against the instructions on the Casey Bill, and mentioned some of the speeches during that debate. Referring to Representative Hoffman, “I thought then, as I do now, that his speech, together with that of Mr. Bell of Tennessee, defeated the appropriation in this House.”

The debate, however, had not been on a direct appropriation for the measure, but on instructions on a bill to refer the National Road Convention’s resolution to the House Committee of Ways and Means. In contrast, the Senate had voted, 20 to 22, against a formal appropriation bill for continuing the work. He broke the vote down by party:

Out of the 20 votes given for the bill, 13 were of the Administration party and 7 of the Opposition; and out of the 22 against it, 12 were of the Opposition and 10 of the Administration party These facts stand recorded in the history of this transaction; and although it may appear unimportant in some sections of the Union, yet with us, in the State of Illinois, it is of vital interest to the people.

Basically, he said, the Opposition party to the Van Buren Administration, namely the Whigs, had defeated the Cumberland Road. Many were guided in their opposition by the fact that President Van Buren had not recommended it:

This is to me a most extraordinary objection coming from them. The Administration has, on former occasions, recommended it, and the President has signed a bill appropriating money for this improvement. It may be the reason with the President that it was not urged on the consideration of Congress this year, that Congress refused last session to make an appropriation for it when it

was recommended to them. Let this be or not be the reason, it is no excuse for the failure. The Administration, although it did not recommend the measure, is not opposed to it, but leaves it, as it should be to the free action of Congress.

Although President Van Buren's message to Congress the previous December had called for "rigid economy," he also recognized that Congress made the laws. "This duty," the President had written, "has been considered fulfilled by requesting such appropriations only as the public service may be reasonably expected to require." These expressions, according to Representative Reynolds, "show that the President is not unfriendly to the measure, but leaves it entirely to the wisdom and discretion of Congress, as he should do."

As evidence, he referred his colleagues to the Act of March 25, 1838, which President Van Buren had signed. "This solemn act will do away the fears of the most timid as to the views of the Executive."

He appealed to the good sense of his colleagues, be they Whigs or Democrats:

Is it possible that the descendants of freemen must wait their action for the dictation of a President, or had they not better "act well their part, there all the honor lies?" I dare any man to return to his constituents and tell them that "he was not independent enough to support this measure because the President did not recommend it."

We have heard much said in this Hall against the dictation and party discipline of the President, and that the Democrats were not free, but bound neck and heels by executive shackles. Is it possible that the Whig party, after making these expressions, wish to be forced to make this appropriation by executive dictation? Or will it not be better for both parties to take the responsibility that is just and proper, and act with that fearless independence that is becoming the Representatives of a free and enlightened people.

Taking the facts as contained in the Journals, and to which I respectfully refer the committee, no other conclusion can be drawn except that the Cumberland road bill received and experienced a Whig death in the Congress of the United States in the year of our Lord 1840.

On April 21, following a discussion on an unrelated matter, Representative John T. Stuart, an Illinois Whig, obtained the floor. With "great regret," he was induced to speak because of comments by Representative Reynolds, "who intended his remarks for Illinois," where they were reprinted in newspapers. Regarding the failure of the bill in the Senate, Representative Stuart went into the history of the proceedings, concluding that "he did not hold either party in that House responsible for the defeat of the Cumberland road." Senators from both parties voted for and against the bill. He examined the votes on the bill, adding that at the last session in 1839, "the bill was laid on the table, and that the larger portion of the Democratic party voted in the affirmative on that question":

He censured the proper departments for not reporting to Congress the estimates for that road in the usual way; and hence he argued that the responsibility of the defeat of that measure rested with the President. He also adverted to certain votes by Mr. Van Buren when in the Senate of the United States, to prove that the President was opposed to the road.

Moments later, Representative John Jameson of Missouri, a Democrat, “replied at great length” to Representative Stuart’s remarks. The remarks covered a variety of topics, including the Cumberland Road. “The gentleman from Illinois, [Mr. Stuart,] Mr. Chairman, set out, as he said, to make a speech for home consumption, and to that end he attempted to show that Mr. Van Buren was opposed to the Cumberland road”:

How does the gentleman undertake to show that Mr. Van Buren is opposed to the Cumberland road? Why, he is opposed to it because the Secretary of the Treasury did not in his report at this session make an estimate for the appropriation for that road, and has been in the habit of doing it heretofore.

To prove his point, Representative Stuart had referred to a letter from Representative George W. Hopkins, who had been a Jacksonian and Democrat during his congressional service but during the 26th Congress listed his party as Conservative. Representative Jameson guessed that Representative Hopkins had no more evidence than Representative Stuart for the claim. Therefore, to be certain, he asked Representative Hopkins if he had ever talked with President Van Buren on the matter and, if so, had the President expressed his opposition to appropriations for the Cumberland Road, “or have you come to the conclusion that Mr. Van Buren was opposed to it from the same circumstances and facts as those mentioned by the gentleman from Illinois?”:

Mr. HOPKINS said that he had never heard Mr. Van Buren say anything, directly or indirectly, in relation to the Cumberland road, and that he presumed that he had come to the conclusion that Mr. Van Buren was opposed to the road from the same circumstances and facts that the gentleman from Illinois had.

In short, Representative Jameson told his colleagues, the reason the two gentlemen believe President Van Buren opposed the road was that the Secretary of the Treasury “did not give any estimate in his report at this session for that road, and that he had done it heretofore.” He proposed to offer a full view of the facts regarding the Cumberland Road, “so far as Mr. Van Buren has acted in relation to it”:

And it seems to me that you and I, and the people of the States interested, must come to the conclusion that he is not opposed to the road, as he has given no evidence that he is, but has given strong evidence that he is not.

In fact, Representative Jameson pointed out, during the 25th Congress, “this same Secretary of the Treasury, under the direction of Mr. Van Buren, did, in his report to the first session of Congress after Mr. Van Buren came to the Presidency, give an estimate for this road; a law passed at that session making an appropriation for it, and was signed and approved by Mr. Van Buren.”

At the next session, the Secretary of the Treasury sent an estimate, but Congress “for the first time since the road started, failed in making an appropriation for it, and thereby abandoned the road:

Then, Mr, Chairman, who is to blame for the abandonment of this road? Where did it get its death-blow? At the hands of the President or the Congress? Sir, it was not at the hands of the President, but of Congress. It was Congress, for the first time, at the last session, [that] failed in making an appropriation for it – abandoned it. How, then, could the President have acted in this matter to have escaped the denunciations of the Whig party? If he had recommended it again, by directing estimates to be reported for the same by the Secretary of the Treasury, after this decisive expression against it at the last session of Congress, he would have been denounced by the greater portion, if not all, of these same Whig gentlemen, as profligate and extravagant, and as aiming to dictate to Congress after it had decided against this road, rejected and abandoned it.

He understood the Whig strategy of putting down “executive dictation, power, and patronage” while it was in the hands of a Democratic President. He pointed out, however, that “many of them, from States not immediately interested in this road, in order to pave the way out of which political capital could be made to operate against the President at the next presidential election in the States interested in this road, have declared upon this floor that they could not vote to appropriate money to carry on this road, because it had not been recommended by the President; that is, because estimates had not been furnished by the Secretary of the Treasury.” Representative Stuart, following this strategy, had declared that “the President is opposed to this road, and that that opposition was the cause of its failure.”

Representative Jameson did not believe “such hollow professions” would fool the people in the West “by attempting to throw such chaff and dust in their eyes.” They will know that those who claimed they voted against the appropriation in the absence of an estimate would have voted against the appropriation in any event. Members of the Whig Party had been raising a “hue and cry” for 8 or 10 years – the time of the Jackson and Van Buren Administrations – about “executive dictation, and the people will not believe you now when you come out and say that you cannot vote for an appropriation because the Executive did not dictate it; they will believe that you have sacrificed this road to electioneering purposes, and that the President has had no hand nor fault in it”:

The last session of Congress took the responsibility of giving this measure its deathblow; and Mr. Van Buren pursued the course of his predecessors, and paid respect to that expression of opinion on the part of Congress; and as Congress took that responsibility, it was their duty to take the responsibility of resuscitating and reviving it. The Executive, then, as in duty bound, will pursue your lead. Then let it be revived by the same hands that killed it; and let us hear no more of this stuff, that we should do nothing unless the President direct us to do it. This doctrine may suit Whigism but it does not accord with Democratic principles.

The failure of the Cumberland Road appropriation bill was not simply because of political maneuvering for advantage in the upcoming presidential election. The road was “first diseased by the action of the Legislature of the State from which the gentleman [Mr. Stuart] came.” The Illinois legislature “determined that the road should not pass through that State unless it struck the Mississippi at Alton”:

It was the entering edge to its destruction. The friends of it falling out among themselves about its location weakened it. The enemies of it seized upon this circumstance and worked its ruin, at least for the present; and I now have but little hopes of it being revived again until 1843, after a new census is taken, and the apportionment thereon made.

He hoped that when Representative Stuart looked back on that portion of his speech “complaining so much of executive dictation,” he will not “come to the conclusion (for if he does he will find himself mistaken) that the people of Ohio, Indiana, Illinois, and Missouri, are so ignorant that they can be humbugged by such palpable inconsistencies.”

Representative Jameson’s lengthy remaining remarks were on other topics.

April 30, as the House debated the civil and diplomatic appropriation bill, Indiana Representative Davis moved to strike out a \$100,000 appropriation for coast surveys, and insert:

Be it further enacted, That the following sums be, and they are hereby appropriated for the continuation of the Cumberland Road, viz: For the State of Ohio \$75,000, Indiana, \$100,000, Illinois \$100,000. These sums to be expended under the direction of the Secretary of War, subject to all the restrictions and regulations of former appropriations.

He said he intended to move to strike out other provisions from the bill, amounting to \$360,000, while his goal was to stay within “the limits of gentlemen who were fastidious in not exceeding the estimates from the Departments.” The fact that the President had not included the Cumberland Road in the estimates for this bill “was a gross omission.” Although Representative Davis said he was a party man, he “did not approve of this part of the course of the Administration but he was not one of those plastic politicians whose only merit was their pliability.” The President had, however, forwarded the Secretary of War’s estimate, “yet no bill had been reported for it to the House; of this he complained”:

Gentlemen refused to vote for this appropriation because Martin Van Buren had not recommended it. Was Martin Van Buren the oracle of the House? He would [say] that gentleman considered him so in some other cases.

He also responded to Representative Parris’s accusation on February 11 that the people of the west were squatters and pillagers of the soil. Representative Davis “went into a eulogy on the said squatters and pillagers, of whom many came from Maine, who were known by their fondness for pine logs and saw mills; but all of them improved the soil by labor.”

He discussed the constitutionality of the project, citing the approval of all Presidents beginning with President Jefferson, and recalled “the masterly speech of Mr. Mason, of Ohio” on the subject. He then discussed the estimates for completing the road, “and insisted that they were altogether erroneous and extravagant”:

The West would take, gladly, one-half of the sum, and engage to finish the work. He argued to show that it would be a saving to appropriate now, lest the road should go into a state of complete dilapidation, and require four times as much hereafter. He noticed the accusation against the President, that he had sacrificed the West to get the South; if so, it was miserable policy, for he would, by such a course, lose the West, and not thereby gain the South.

Representative W. Cost Johnson, a Maryland Whig, offered an amendment to the Davis Amendment to appropriate \$80,000 to complete the road between Rockville and the Monocacy River. Representative Davis declined the amendment to his amendment. Representative Johnson defended his amendment “with great earnestness, showing its great importance to the regularity of the mails; insisting that the United States had failed of fulfilling its contract to Maryland, in neglecting this part of his State, and commending the enterprise of his State, in expending so largely on her roads and canals.” He would offset the amount by seeking reductions in the surveys included in the appropriation bill.

Representative George N. Briggs, a Whig from Massachusetts, said he opposed the Johnson Amendment, but supported the Davis Amendment “as part of that great system, which, though broken in upon, had not been broken down, and he hoped never would.”

Representative Davis now interjected that he did not wish to strike out the appropriation for the coast survey.

Representative Briggs began to discuss party affiliation of those on either side of the question, but this resulted in a complaint of irrelevance and a quorum call. After the call for a quorum went out, Chairman Fillmore of the Committee of Ways and Means announced when the quorum was achieved:

Mr. BRIGGS resumed, and further insisted on his former position, and protested against Massachusetts being included in the general charge of having destroyed the appropriations. Mr. B. had always voted for the road, and should continue to do so, on general and unchangeable principles.

Mr. FILLMORE appealed to all friends of internal improvements not to press the question now. If that subject was brought up, he should be compelled to introduce amendments to the bill for harbors and rivers. The speeches were interesting; but this was not the time to press amendments of this kind. There was no hope of such measures succeeding till the aspect of the Administration was changed.

Mr. REYNOLDS rose to reply.

Loud cries of order echoed through every part of the Hall.

The CHAIR called to order.

Representative Reynolds argued “with some warmth” that he had not misrepresented the votes as shown in the journal, “insisting that the Whig speeches had operated to defeat the appropriation; and that it would be found, by reference to the journal, that its death blow had been given by the Whigs.”

Representative Briggs said that the journals proved the opposite of what Representative Reynolds had claimed. Representative Reynolds “continued, and in his reply elicited much merriment from the committee, insisting that the Whig speeches defeated the measure.” Representative Briggs countered that a review of the journal showed that 63 Administration votes had defeated the bill.

Representative Horace Everett of Vermont, who had entered Congress in 1829 as an anti-Jacksonian but was now a Whig, wanted to explain why he had voted for the Cumberland Road, and also against it:

Sir, (said Mr. E.) when I first came here, I was a friend of the system of internal improvement, and voted for this road for four or five sessions. I then considered it, and now consider it, a national object. But, sir, when I found that the system was broken down – when the Constitution was limited to tide water; when, sir, I found the system completely prostrated, so far as the country at large was interested, I voted against this road. I have done so for years. Since the system was prostrated, the States have taken the subject into their own hands; and in the situation they were now placed, and after having expended large sums, he had no hope that a majority could hereafter be found in favor of the system. He considered that the system of internal improvement had been, years since, effectually prostrated; and he had no expectation that it would ever be resuscitated under any future Administration.

The House then voted on the Johnson Amendment to the Davis Amendment. The vote was decided in the negative. The House then voted, 51 to 92, against the Davis Amendment to the appropriations bill.

Although the appropriation for the Cumberland Road was dead, the subject would come up again. On May 18, Representative Davis presented resolutions on several topics, including “certain joint resolutions passed by the Legislature of Indiana, on the subject of the Cumberland road; which he moved to refer to the Committee of Ways and Means, with instructions to report a bill [to] continue the construction of the said road in the States of Ohio, Indiana, and Illinois.”

The House rejected a motion to lay the resolution on the table, 63 to 78. Representative Hubbard called for dividing the motion to vote first on referral and second on instructions. The House voted 77 to 60 for the referral, but adjourned before a vote on

instructions was taken. That vote took place on May 25, and resulted in a refusal to adopt the instructions, 87 to 90.

Representative Wick moved to reconsider the earlier vote on referral. He wanted to refer the joint resolutions to the Committee on the Judiciary “with instructions to inquire whether the obligation does not rest on the Government to complete said road; and he said he would be glad to see a report on the subject from the Judiciary Committee.” It would bring “a true view of the matter before those interested, and tend to settle a vexed question.”

The House voted, 79 to 51, to lay the motion on the table.

On July 9, the House was considering the Army Appropriation Bill when Representative Rariden submitted an amendment proposing to appropriate \$225,000 for continuation of the road with an equal amount of \$75,000 going to each of the three States. In response to an inquiry, the Chair ruled that the amendment was not in order. Representative Davis appealed the ruling, but the House adjourned for the afternoon before a vote on the appeal. The evening session began with the question pending. Representative Rariden “observed that as there was no quorum present, he would withdraw the amendment, with a view of renewing it hereafter.”

He would not have an opportunity to return to the subject until the second session of the 26th Congress, which would end on March 3, 1841, the day before the new President, General William Henry Harrison, took office.

The End of Operations

On December 5, 1840, President Van Buren sent his fourth and final annual message to Congress. He began with thanks for “the invaluable blessings of health, plenty, and peace”:

Seldom has this favored land been so generally exempted from the ravages of disease, or the labor of the husbandman more amply rewarded; and never before have our relations with other countries been placed on a more favorable basis than that which they so happily occupy at this critical conjuncture in the affairs of the world.

A usual, he went through many topics, including banking reform, but he included a strong message of economic frugality:

The policy of the Federal Government, in extinguishing as rapidly as possible the national debt, and, subsequently in resisting every temptation to create a new one, deserves to be regarded in the same favorable light In time of peace there can, at all events, be no justification for the creation of a permanent debt by the Federal Government. Its limited range of constitutional duties may certainly under such circumstances, be performed without such a resort. It has, it is seen, been avoided during four years of greater fiscal difficulties than have existed in a

similar period since the adoption of the Constitution, and one also remarkable for the occurrence of extraordinary causes of expenditures.

But to accomplish so desirable an object, two things are indispensable: first, that the action of the Federal Government be kept within the boundaries prescribed by its founders, and, secondly, that all appropriations for objects admitted to be constitutional, and the expenditure of them also, be subjected to a standard of rigid but well considered and practical economy.

He discussed the topic at length, including:

To avoid the necessity of a permanent debt, and its inevitable consequences, I have advocated, and endeavored to carry into effect, the policy of confining the appropriations for the public service to such objects only as are clearly within the constitutional authority of the Federal Government; of excluding from its expenses those improvident and unauthorized grants of public money for works of internal improvement, which were so widely arrested by the constitutional interposition of my predecessor, and which, if they had not been so checked, would long before this time have involved the finances of the General Government in embarrassments far greater than those which are now experienced by any of the States

President Van Buren transmitted the report of Secretary of War Poinsett dated December 5, 1840. Along with many other topics, Secretary Poinsett commented:

No appropriation having been made at the last session of Congress for the works of internal improvement which were under the superintendence of this department, they have, for the most part, ceased. I adhere to the opinion expressed in my last report, that the system required to be revised, both with regard to the principle upon which such improvements ought to be authorized, and the manner in which they ought to be conducted.

The documents accompanying the message included a report, dated December 3, 1840, from the Chief Engineer, Colonel Totten. He explained how the absence of an appropriation affected work on the “National Road”:

On the adjournment of the last session of Congress without having granted further appropriation for the road, the agents were instructed that, in consequence of the small amounts still applicable, it would be necessary to draw the operations to a close; and to this end, all public property belonging to these appropriations should be disposed of, and the avails thereof applied to the road, or to the extinguishment of claims against it. Every outstanding claim, of every nature, was to be liquidated, and the remaining funds reduced to a minimum by operations on the road. Should there remain, unavoidably, claims not liquidated, the means of paying them must be retained. Care was to be taken, moreover, that the closing work on the road should contribute most – 1st, to the

preservation of the road;
2d, to its good condition; and 3d, to its extension.

Colonel Totten had sent the instructions on July 24, 1840. He informed Captain Dutton:

Congress having adjourned without making appropriation for the Cumberland road, it becomes necessary to adjust the further operations to existing means

The department would be sorry to believe that no further appropriations are to be expected for this road; but a present grant having been decidedly refused, it becomes necessary to bring the operations to a close. The measures to be taken with this view, the department, with the fullest confidence, leave entirely to your judgment and discretion, and also the time to be consumed in consummating these measures; knowing that there will be no delay not called for by prudent arrangements.

You will bear in mind that these closing operations must be as complete as if they were final, although it is to be hoped they may not prove so; that is to say, all the public property belonging to this appropriation must be disposed of, and the avails thereof applied to the road, or to the extinguishment of claims against the road; every outstanding claim of every nature being liquidated, and the remaining funds reduced to a minimum by operations on the road. Should there remain, unavoidably, claims not liquidated, the means of paying them must be retained. As to the road itself, you will be careful that these latter operations are of a nature to contribute most – 1st. To the preservation of the road; 2d. To its good condition; and 3d. To its extension.

Have the goodness to present, as soon as may be, your project for winding up the business of the road; proceeding therein, in the mean time, however, without waiting for the special sanction of the department.

I will thank you to inform me whether you cannot dispense with the services of your assistant; and, if so, how soon.

Colonel Totten sent a similar letter on the same date to Major Ogden.

On August 11, Colonel Totten changed instructions:

Since my 24th ultimo, it has been found necessary, from the condition of the Treasury, to direct the smallest possible expenditures under all appropriations of the Government; and I have therefore to request you to remodel your project for the closing of operations on the road in Indiana and Illinois, in such a way that the smallest sums possible shall be called for during the present year, and, indeed, till after the 1st of April next. And it is desirable that you should make similar arrangements, whenever it can be done without violence to the public faith, for the postponement of the payment of outstanding claims.

This necessity for a very sparing expenditure will of course prolong your closing operations; but as a similar delay must attend all works of the department, there is not the same reason to regret your being detained on the road, that there would otherwise be.

Captain Dutton was in Albany, New York, when he received Colonel Totten's letter. On July 28, Captain Dutton wrote that he would reply in detail when he returned to Springfield, Ohio, but added:

I have to state, however, that the funds available for further operations on the road are insignificant in amount The whole proceeds on this account may be about \$150.

The operations on the road in Ohio, since 30th September last, have been confined almost exclusively to the completion of certain contracts for grubbing, grading, and bridging, all which are now finished; and, at this time, that part of it under the control of the United States is in the best possible condition for lying over, without receiving injury, until a further appropriation is made for its continuance.

He submitted his annual report from Springfield on October 15, 1840. The absence of an appropriation for 1839 meant that since his 1839 report, operations in Ohio had "been restricted, with trifling exceptions, to the work then under contract and unfinished; which consisted in the building of wooden superstructures and abutments of bridges, the masonry of arched bridges and culverts, and the grubbing and clearing between Springfield and the State line":

This work, embraced in five contracts, has been satisfactorily completed; the amounts due thereon paid over; and the operations brought to a close about the termination of the last spring.

Five wooden bridges on stone abutments have been built or completed across Mad river, Buck creek, Donald's, Jackson's, and Mud creek; and the stone bridges and culverts put up to the 52d mile west of Columbus, or 9th west of Springfield; and the line grubbed and cleared to the 82d, or for 39 miles west of the latter place.

The work done during the year amounts to 5 miles grubbed; 1,122 perches of masonry laid; 168 linear feet of bridge superstructure built; 8,798 cubic yards of earth removed and embanked, in completion of the fill across Bartlett's run, on the 46th mile; and the delivery on the ground of 311 perches of building-stone for culverts; together with some repairs of the grade and cutting of water-ways for bridges and culverts. The structures have all been neatly and substantially executed; the masonry built of the stratified limestone from the valley of Mad river, and the bridge superstructures of poplar and oak from the adjoining country.

The unfinished portion of the road in Ohio, being the 53¾ miles included between Springfield and the State line, now presents 39 miles opened and grubbed; 4 miles graded and bridged; and the bridging and masonry complete for 9 miles, exclusive of a bridge of fifty feet span, on the twelfth mile west of this place.

The expenditures on the unfinished division of the road amounted to \$129,543.77:

The only portion of this work which can be considered useful, and available to the travel in the present condition of the work, is the four miles reported as bridged and graded, and which, crossing the streams and hills to the west of this place, greatly facilitates the travel between this point and the country hence to the Miami river.

Additional appropriations would be required to render the balance “useful, or enable the line opened to be used as a thoroughfare.”

As of September 30, 1840, the balance of funds available was \$407.74. “This balance will be absorbed in making some slight but necessary repairs of the road, and in liquidating some accounts unsettled at this date, but small in amount.”

The estimated cost of completing the unfinished section was \$292,000.00:

The above sum, if it is intended to proceed with the construction of the work, can be advantageously applied during the year 1841, in fulfilment of the project submitted last year, of continuous completion, and surrender of the road to the State in toll-gate sections.

In a letter dated November 4, 1840, Captain Dutton reported:

I have the honor to report that, during the past month, I have been engaged in bringing to a close the business connected with the national road in Ohio, and in directing certain repairs thereon, and that I shall be occupied with the same duty during the greater part of the present month of November. The services of my assistant, Lieutenant Woodbury, were . . . no longer necessary on the Cumberland road in Ohio after the 1st November, and he is now here awaiting instructions from the department.

In response to the July 24 letter on limiting expenditures, Major Ogden replied on August 14 regarding the steps for closing out operations in Indiana. His initial reaction was to expend the funds on hand (\$10,968.52) as follows:

Of which it is proposed to expend \$6,000 on grading east of Richmond; (this will connect the present finished part of the road with a turnpike now under construction from Dayton, Ohio, to Richmond, Indiana;) \$4,000 to be expended on the road throughout the State, in placing it in the best condition the means will admit of; the balance, \$968.52, and the proceeds of sales, to be expended in the collection of materials for the Wabash bridge.

It is believed that the operations may be closed by the 30th of September, and every exertion will be made to effect that object.

The services of my assistant can be dispensed with, whenever they are required by the department.

Major Ogden informed Colonel Totten on August 15:

. . .that the balance on hand of former appropriations for the Cumberland road in Illinois on the 1st of August, amounted to \$38,304.07; and that there will be due to contractors, when they shall have completed their work, \$34,306.51: leaving a balance of \$3,997.56, the greater part of which will be consumed in the payments for extra work performed by them, (the contractors.) After the settlement of which, it is proposed that the remaining funds be applied to placing the road in a proper state to await further operations.

A few days later, he received Colonel Totten's August 11 letter ordering him to minimize expenditures on the road. Major Ogden replied on August 19:

In consequence of which, I have this day ordered all work that had been commenced in conformity with my project of the 14th instant to be stopped, and made rather a short estimate of the probable expenditures of this month, and forward herewith a requisition for \$1,200 for the service of the Cumberland road in Indiana for the month of August. This may not meet the amount of expenditures; yet, with other funds I have on hand, I can close the accounts, and provide for any difference in the requisition of September; after which, it is believed that other funds will not be required until December.

The operations for collecting materials for the Wabash bridge have already closed, and the steamboat is now employed in bringing the tools, machinery, &c., from the quarry to this place, where they will be sold at auction on the 25th of September, if not before disposed of at private sale.

Major Ogden, by letter dated October 11, 1840, reported on the condition of operations in Indiana and Illinois. Contracts for bridges on the 44th and 66th miles west of Indianapolis had been completed:

A small force was employed in completing and securing the unfinished part of the road near Indianapolis until the 15th of July, at which time the road being considered in a proper state to lay over, the assistant superintendent, assistant engineer, rakers, &c., were discharged. The steamer Terre Haute has been employed, when the state of the river would admit, in transporting stone from the quarry to the site of the Wabash bridge. The operations on the eastern part of the road had been suspended, after the completion of the contracts near Richmond until early in July, when the superintendent was informed that the company who were constructing a turnpike road from Dayton, Ohio, to Richmond, Indiana, would urge it to completion as far as the State line, during the present year,

provided the citizens of Richmond would connect it with that borough, and that they had determined on complying with the wishes of the Ohio company.

This road connects with the Cumberland road east of the present grade, and near a hill requiring a deep-cut and extensive embankment at its base. It was therefore thought advisable to reduce the grade of this hill as much as the available means would allow; operations to effect this object were commenced and urged with sufficient energy to insure its completion by the 30th of September, until the receipt of your communication of the 11th of August, when they were suspended. As this is work that may be carried on during the winter, its further prosecution will be postponed until after the road generally is put in repair.

Major Ogden's report continued:

Operations with a view to place the road in the best possible condition to await future appropriations were also commenced, and some progress made; but these were likewise suspended, in consequence of the condition of the Treasury. The public property, as far as practicable, has been sold.

Previous to the sale of the property at Terre Haute, (knowing that the steamer Terre Haute, and many of the articles purchased for the Wabash bridge, would not bring one-tenth part of their value if exposed to sale at this place,) I was induced, by a temporary rise in the river, to send the steamboat and four loaded scows to the Ohio river to be sold, where such articles would be more in demand. She unfortunately grounded on the rapids, where it is thought advisable to let her remain until the fall rise of the Wabash.

He described the state of the road in Indiana:

The present state of the road is decidedly bad. The temporary bridges that were constructed to facilitate the operations have nearly all decayed, and are falling almost daily. The unfinished and unprotected grade is washing away or cut in gulleys by every shower, where the ground is undulating; and, from a want of proper care, worn in deep holes where the country is level.

He estimated that \$8,745.74 remained available for future operations. It "will be expended in placing the road in the best condition the means will admit of."

In Illinois, "expenditures on this road have been restricted to as small a scale as was consistent with its essential interest. Contractors were given considerable leeway, but were urged in June to complete work by September 30, in order that all accounts relative to the road might be closed on that day; since which time, it is believed that every exertion within their means has been made":

The grading on miles 12, 13, part of 14, 74, 75, 76, 77, 78, and 79, has been finished during the year, and the same on 89 and 90 will be completed by the 20th instant. Section 3, western, and 12 and 13, eastern division, will be finished

in a few days; so that it is probable that all accounts with the contractors will be closed at the end of the present month.

The state of the road in Illinois “may be said to be in fair order for travelling during the summer and fall”:

In many places where no work has been done since 1834, the road has washed, and been otherwise so much injured as to be dangerous to the travel. The tressels which were put under the superstructure of most of the old bridges have become decayed, and deranged by the falling in of the abutments: such is particularly the case with the bridge of 200 feel span over the Embarras; the bridges over the North and Muddy forks, and a bridge in the Embarras bottom. These are all of large size; have been built with small timbers, on Long’s plan; are in good preservation; and could be repaired at a small expense, when compared with the cost of new bridges.

Calculating funds and expenditures, Major Ogden estimated that \$4,847.76 was available for future operations “and which will be expended in repairing the road and securing the bridges.”

While Major Ogden was implementing the change of plans, Colonel Totten submitted a memorandum on September 28, 1840, to Secretary Poinsett regarding the plan Major Ogden had outlined in his August 14 letter regarding the expenditure of about \$6,000 in Indiana. With \$6,600 in the Treasury for the road in Indiana, Colonel Totten asked if he

could authorize Major Ogden to proceed. The Secretary responded:

The Chief Engineer will authorize Major Ogden to renew the works according to the original plan presented by him, and without unnecessary delay, as the means of the Treasury will now admit of this expenditure; to be drawn, however, gradually from it.

Colonel Totten informed Major Ogden of the change of plans on October 1:

I am directed by the Secretary of War to say to you, that, as the means of the Treasury will now admit of the expenditure, the operations on the Cumberland road in Indiana will be resumed without delay, according to the plan submitted by you to this department of the 14th of August last. The money being made available, the department fully approves this plan.

Noting the phrasing of Secretary Poinsett’s response, Colonel Totten added:

Your attention is drawn particularly to the concluding clause of the Secretary’s endorsement, referring to the gradual withdrawal of the funds from the Treasury. And, in order that the department may be aware of the calls it will have to make from time to time, you will present an estimate of the funds that will be required

for each month, until exhausted; and, unless compelled by necessity to deviate from it, your monthly requisitions will be made to conform this estimate.

On October 12, Major Ogden informed the Chief Engineer that:

The operations will recommence this day, and proceed by first placing the road in a proper condition to be left, and then expending the balance on the road east of Richmond.

The funds required to effect this object will be \$2,000 per month for the months of October, November, and December, 1840; and \$600 for the month of January, 1841.

[*Message from the President of the United States to the Two Houses of Congress, 26th Congress, 2d Session, Senate, Doc. No. 1; Suspend Operations – Public Works, Letter from the Secretary of War in relation To the suspension of operation on the public works on the lake borders of Ohio, Indiana, Michigan, Illinois, and Wisconsin, and on the Cumberland Road in Ohio, Indiana and Illinois, &c.; 26th Congress, 2d Session, Ho. of Reps. War Dept., Doc. No. 41*]

One More Try

On December 17, 1840, Representative Rariden introduced the following resolution:

Resolved, That the Committee of Public Lands be instructed to inquire into the expediency of setting apart three hundred thousand dollars per annum of the proceeds of the public lands for the continuation of the Cumberland Road in Ohio to its western termination, to be constructed in a continuous line from East to West, and of distributing the residue of the said proceeds among the several States upon the principle of what is called Mr. Clay's land bill, taking the census of 1840 as the basis of the distribution.

A motion to lay the resolution on the table was pending when the House adjourned.

Representative Rariden's motion was taken up on December 22, with the question being on the motion to lay the resolution on the table. By a vote of 105 to 81, the House agreed to lay the motion on the table.

Representative Proffit asked leave to submit a second resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reporting a bill providing for the expenditure of \$150,000 in each of the States of Ohio, Indiana, and Illinois, during the year 1841, on the Cumberland road.

Speaking in "a very animated manner," he predicted dire consequences if the House did not make an appropriation to continue construction:

He declared that the eight States of the Northwestern Territory would unite, and in their indignation would make their way into the hall to obtain their rights by force. He could not conceive why the people of that part of the Union should be treated so. The South got appropriations for its Dismal Swamps and every thing else; so also did the North; but as for his people, and those of the other Northwestern States, they could obtain nothing. Why, said he, are the people of the West to be thus trampled upon? Mr. P. also discoursed on the grievances of the Western people arising from other causes. He then touched upon nullification, the tariff question, etc. and concluded by giving the House a solemn warning, that in case the resolution should be rejected, the people of the Northwest would rise in their might, when their indignation would be an all-consuming blaze, without a particle of smoke, which should destroy all that was not right.

Maryland Representative Johnson “in the course of some very humorous remarks in reply to the member from Indiana, suggested to him that the true and only reason why the Cumberland road had not been completed, was that it had been begun at the wrong end. The right end was in Maryland, between Rockville and Fredericktown; and until the road should be commenced in that quarter, the gentleman, with all the people of the West at his heel, would never be able to obtain an appropriation. Mr. J. concluded by asking the gentleman to accept a modification of the resolution, appropriating \$80,000 for that portion of the Cumberland road in the State of Maryland between Rockville and the Monocacy.”

Representative Proffit accepted the modification. Representative Hubbard, having said that “he was sure nothing could be obtained by threats,” moved to lay the modified resolution on the table.” By a vote of 94 to 92, the House agreed to do so.

On January 6, 1841, Representative Davis indicated he would offer an amendment to the Army appropriation bill when it came up for consideration:

Sec. __. And that the sum of three hundred thousand dollars be appropriated for the continuance of the Cumberland Road through the States of Indiana, Ohio, and Illinois, to be disbursed equally among said States, and to be subjected to all the restrictions and limitations of former appropriations.

The motion was ordered to be printed.

Representative Davis tried again on February 27 as the session was rushing to adjournment in time for the presidential inauguration. He offered an amendment to the Army appropriation bill for 1841:

For the continuance of the Cumberland road through the States of Ohio, Indiana, and Illinois, \$300,000, to be subjected to all the restrictions and limitations of former appropriations.

After a brief discussion of whether the amendment was in order, being a different subject than the bill, the House voted, 77 to 84, to reject the amendment.

Thus, the 26th Congress would end on March 3, 1841, without appropriating funds for the Cumberland Road.

Although President Van Buren questioned the constitutionality of many internal improvements, he had signed the last major appropriation bill for the work in 1838.

Overall, he was willing to consider projects of national importance. According to Alwine, President Van Buren signed seven internal improvements bills during his first year in office. In addition to the 1838 bill appropriating funds for the Cumberland Road, he signed bills for Wisconsin (\$44,000 for roads, land for a canal), Arkansas and Louisiana (\$70,000 to remove the great raft or logjam in the Red River), Florida (\$37,300 for road construction), and “a lighthouse bill plus a combination rivers and harbors bill in sixty-nine localities amounting to \$1,315,111.

In his second year, he signed “five bills amounting to \$474,331; of this amount \$394,331 was devoted to a miscellaneous lighthouse bill”:

The remaining sum of \$80,000 was programmed for three roads in Iowa, amounting to \$28,500 plus \$1,500 to survey rivers; improvement of river navigation in Florida, \$28,000; and two bills for improving roads, constructing piers, and conducting a survey for a railroad in Wisconsin amounting to \$22,100.

During the final two congressional sessions of Van Buren’s administration no public funds or lands were appropriated for internal improvements.

President Van Buren vetoed only one bill, a pocket veto of a joint resolution on distribution, in part, of President Madison’s papers.

In the 1840-1841 debates, Members of Congress argued about whether Congress or the President had killed appropriations for the Cumberland Road. The people along the road had no doubt about President Van Buren’s complicity, as illustrated by an anecdote that appears in many Cumberland Road sources about his visit to Indiana.

Although the people had rejected President Van Buren for a second term, he had not abandoned hope of regaining the office. In the summer of 1842, he was on a trip to the West in hopes of restoring his popularity before the 1844 election. While he was in Indianapolis, a “devilish plan” took place in nearby Plainfield, as Jordan described in his book on the National Road:

Van Buren would be taught what it was to toil along over a highway that jounced a man’s liver sidewise. When he left Indianapolis, his route took him through Plainfield. No arches covered his pathway but a reception was ready.

The President’s carriage thumped into town while citizens yelled gleefully, “Here he comes!” Van Buren’s driver, a local lad, knew what to do. Instead of walking

his team the last half mile, he lashed them to a frenzied gallop. As the presidential stage neared a treacherous mudhole, a favorite wallow for hogs, the lad yanked hard on his left rein. The team reared and backed. The carriage slewed around to the left, its wheels cut under, climbed the bank and finally banged against the roots of a great tree. Slowly – very slowly – the stage overturned to land with a splash right in the center of the wallow. Van Buren’s agile driver jumped to safety.

Before anyone could wade through the sucking slime to aid Van Buren, his head, topped by a badly crushed, broad-brimmed hat, popped through the door. The President gradually pulled himself out, his long, black broadcloth cloak splashed with muddy water, and his tight-fitting pearl-gray trousers and fine polished boots ruined.

His stage was scarcely righted when rumor sped through town that the episode was no accident. The driver had been bribed to dump his passenger. An Indianapolis newspaper sarcastically remarked that the only “free soil” of which Van Buren had knowledge was the dirt he scraped from his person in Plainfield.

Other versions of the anecdote can be found, but in 1941, the Daughters of the American Revolution placed a plaque to mark the location of the Van Buren Elm.

President William Henry Harrison

Although President Van Buren secured the Democratic Party’s nomination in 1840 by acclimation, he was deeply unpopular around the country primarily because of the economy’s severe downturn. His nickname was Martin Van Ruin. The party refused to nominate Vice President Johnson again; he was unpopular, particularly in the South, because of his common law slave wife and mixed-race daughters. Instead, the party let each State select its own vice presidential nominee.

Along with nominating President Van Buren for a second term in May 1840, the Democratic Party became the first national party to issue a platform reflecting its policies. The first three of the nine resolutions were:

1. Resolved, That the federal government is one of limited powers, derived solely from the constitution, and the grants of power shown therein, ought to be strictly construed by all the departments and agents of the government, and that it is inexpedient and dangerous to exercise doubtful constitutional powers.
2. Resolved, That the constitution does not confer upon the general government the power to commence and carry on, a general system of internal improvements.
3. Resolved, That the constitution does not confer authority upon the federal government, directly or indirectly, to assume the debts of the several states, contracted for local internal improvements, or other state purposes; nor would such assumption be just or expedient.

(The funds intended for the States under the Deposit-Distribution Act could be used to retire debt accumulated for internal improvements. The third resolution of the platform

related to the debts incurred before early 1837 by many States eager to finance roads, bridges, canals, and other internal improvements they could not otherwise afford, and the near impossibility of completing the projects and retiring the debts after the economic downturn. With the Panic of 1837, the surplus that was to be distributed to the States disappeared.)

For President, the Whigs nominated, not Henry Clay, but General William Henry Harrison, one of the candidates Van Buren had defeated in 1836. General Harrison had been born at Berkeley Plantation, Virginia, but became a resident of North Bend, Ohio, after marrying Anna Tuthill Symmes, a resident of that city, in 1795.

Although General Harrison was best known for his military activities, he had served in the House of Representatives twice (1799-1800, and 1816-1819), as Governor of the Indiana Territory (1801-1812), and in the United States Senate (1825-1828). The author of a campaign biography that focused mainly on General Harrison's military career and service as Governor, included an appendix about his service in Congress to contrast his career with that of President Van Buren on internal improvements for the western States during his Senate years. "Let the friends of Mr. Van Buren point to a single act of his public life calculated in the least to advance the interests or happiness of the West."

Consulting the congressional records of the era, the author found that:

- April 24, 1824 – Senator Van Buren voted against the General Survey Act.
- May 19, 1824 – Senator Van Buren voted against "An act to improve the navigation of the Ohio and Mississippi rivers," adding that Senators Benton, Eaton, and Jackson voted for the bill.
- February 11, 1825 – Senator Van Buren voted to strike out a provision of the military service appropriations bill "for making surveys and carrying on the operations of the Board of Engineers, in relation to internal improvements."
- February 24, 1825 – Senator Van Buren voted against "An Act for the continuation of the Cumberland Road."
- March 20, 1826 – Senator Van Buren voted to strike out a provision from "An Act making appropriations for the military service of the United States, for the year 1826" providing funds for continuing the Cumberland Road. Senator Harrison voted against striking it out.
- April 22, 1826 – Senator Van Buren voted against a bill authorizing "a subscription for stock in the Louisville and Portland Canal Company," while Senator Harrison voted for it.
- February 27, 1827 – Senator Van Buren voted to strike funds for continuing the Cumberland Road from Canton to Zanesville, Ohio. Senator Harrison voted in support of continued funding, along with Senators Benton, Eaton, Hendricks, Johnson of Kentucky, King of Alabama, and every Senator from the West.
- March 1, 1827 – Senator Harrison voted for, Senator Van Buren against, repair of the Cumberland Road.

As the list went on, the two split on such projects as opening a canal to connect the waters of the Illinois with those of Lake Michigan; public land to aid Indiana in opening a

canal from the Wabash River to Lake Erie; and purchasing stock in the Columbus and Sandusky Turnpike Company in Ohio.

After General Harrison left the Senate, Senator Van Buren continued to vote against funds for the Cumberland Road. The author listed his votes against funds for the road on January 28, 1828; April 10, 1828; and April 22, 1828.

The author advised readers:

And . . . let him contrast the public acts of Mr. Van Buren merely in so far as the West is more intimately concerned, and then let him decide which is entitled to his vote for the high and exalted station of President of these United States.

[Jackson, Isaac Rand, *A Sketch of the Life and Public Service of William Henry Harrison*, published by I. N. Whiting, Columbus, Ohio, 1840]

The party nominated former Senator Tyler for Vice President. Harrison, who was 68 years old, ran an aggressive campaign featuring the slogan “Tippecanoe and Tyler, Too,” referring to Harrison’s victory in the 1811 Battle of Tippecanoe against Tecumseh’s Confederacy – and the nominee for Vice President. The Whigs portrayed General Harrison as a man of the common people from the hard-scrabble West – the “log cabin and hard cider candidate” – despite the truth that he came from a wealthy Virginia family in contrast with President Van Buren who had come from a poor working family.

General Harrison secured 1,275,612 votes and 234 electoral votes – with 148 electoral college votes needed to win – compared with 1,130,033 votes and 60 electoral votes for President Van Buren. The Harrison campaign had energized the public, with 80 percent of eligible voters going to the polls.

Journalist Gail Collins, in her American Presidents series biography, wrote of one incident during the election year involving Representative Crary of Michigan. As noted earlier, he spoke at length on February 12 in support of the Cumberland Road bill and the importance of river and harbor improvements in Michigan before shifting to an unrelated topic:

Isaac Crary, a Democratic congressman from Michigan and a general in the militia, took to the floor of the House of Representatives during a debate over road construction to denounce Harrison as an inept military leader and the “greatest egotist that ever wrote the English language.” The next day, a Whig from Ohio, Tom Corwin, decimated Crary as a peacetime general, marching in hot from the field to unsheathe his sword “and with an energy and remorseless fury he slices the watermelons that lie in heaps around him.” Poor Crary was made merciless fun of as the “watermelon general,” so much so that he lost his seat and acknowledged that Corwin “killed me dead politically.”

As President-elect Harrison prepared in North Bend for his trip to Washington, he was distracted by office seekers, a common problem for incoming Presidents. He thought he could take refuge in Kentucky. On November 21, however, he arrived in Frankfort and was immediately greeted by Henry Clay, who always thought he should have been the presidential nominee of the Whig Party. Collins wrote:

There, Harrison's easy manner smoothed over Clay's ruffled feathers, and the two men seemed to come to agreement, especially since Clay had no desire to leave the Senate for a job in Harrison's cabinet. He had a great hope, however, of being the behind-the-scenes power in a Harrison administration, particularly since Harrison had signed on so vigorously to the idea of Congress being the driving force in settling national policy. They parted on the best of terms, with Clay believing that some of his picks would be included in a Harrison cabinet.

President-elect Harrison began his trip to Washington in Cincinnati while his wife, Anna, remained at home recovering from an illness and the death of their 34-year old son Benjamin in June. His hotel was surrounded by celebrants who kept the Harrison party awake. He insisted on "walking through the muddy streets to his riverboat," which took him east along the Ohio River, stopping at towns where he was greeted by so many well-wishers and shook so many hands that he occasionally had to use his left hand to rest his right hand. "In between there were crowds along the bank, waving and hoping to see the hero of the moment, who seldom disappointed." The steamer finally arrived in Pittsburgh, "where the huge crowd made it difficult for Harrison to make his way to the hotel, which would again be surrounded all night by well-wishers who managed to keep all the inhabitants awake."

From Pittsburgh, he traveled primarily on the Cumberland Road:

He then began the land trip to Washington, where the residents of every village and town on the route turned out to cheer him on. Harrison's days were a series of jolting rides that required incessant waving, interspersed by receptions, handshaking, dinners, toasts, and meeting with a constant stream of visitors.

Searight wrote that:

When Harrison . . . passed over the road to the capital, to be installed in the presidential office, a splendid new coach was provided . . . called the President, in which the President-elect and his immediate family were conveyed. The presidential parties did not travel in the night time, but rested at stations along the road until morning. At Uniontown, President Harrison and party stopped over night at the Walker house, now called the Central.

He added that the Walker house was not a regular stage house, "but the distinguished passengers were quartered therein . . . for the purpose, probably of conciliating some local political influences."

Between Cumberland and Frederick, Maryland, the Harrison party continued on the Maryland turnpike. When they arrived at Frederick on February 5, residents greeted the President-elect warmly at Dorsey's City Hotel and he addressed them briefly. In the morning, President-elect Harrison walked to the railroad depot to catch a Baltimore and Ohio Railroad steam train to Baltimore, where he stayed at Barnum's Hotel on Monument Square.

On February 9, he departed the city on the Baltimore and Ohio Railroad's branch line to Washington for the final leg of his journey. He arrived at the Baltimore and Ohio

Railroad station near the Capitol during a snowstorm. President-elect Harrison went to the National Hotel, at Pennsylvania Avenue and Sixth Street, NW., in Washington.

President Van Buren invited the President-elect to dinner. The President was surprised that he liked his successor, “He talks and thinks with . . . much ease and vivacity. He is as tickled with the Presidency as is a young woman with a new bonnet.” Nevertheless, President Van Buren did not attend the inauguration of his successor. [Collins, Gail, *William Henry Harrison*, The American Presidents Series, Times Books, 2012]

President-elect Harrison’s inauguration would set a pattern – the first to include a parade. Ronald G. Shafer wrote about the parade in *The Washington Post* on the occasion of the inauguration of the 45th President:

Washington, at that time, was a city of 23,000 people. There was only one paved street, Pennsylvania Avenue, which ran between the White House and the Capitol. The avenue was lined with bars, lottery shops and gambling houses. The rest of the city’s streets were muddy dirt roads. The White House stood near mosquito-infested swamps along the Potomac River.

It was a cold, cloudy day with a stiff wind blowing from the northeast. At 10 a.m., the procession escorting President-elect Harrison to the Capitol set off up Pennsylvania Avenue led by the uniform militia of the District of Columbia.

Four white horses pulled a new carriage that Baltimore Whigs had just presented to Harrison. But Old Tip declined to ride in it. Instead, the 68-year old Harrison chose to ride his horse, Old Whitey, to the Capitol. Despite the chilly weather, he wore no coat and regularly doffed his hat to the cheering crowd.

(Collins pointed out that he “had not forgotten the Democratic press calling him a ‘superannuated and pitiable dotard,’ and he was determined to demonstrate his virility – not to mention his learning.”)

Behind the President-elect came reminders of his campaign’s “log cabin and hard cider political rallies, complete with rolling log cabins on wheels, cider barrels and raccoons.” The parade included “a working power-loom on wheels drawn by six white horses and troops of old soldiers, while thousands of people along the avenue cheered and waved as President-elect Harrison rode by. The parade included military companies, political clubs, and groups of college students.

Vice President-elect Tyler, accompanied by Vice President Johnson, went into the Senate chamber to take the oath of office. As Vice President, former Senator Tyler would have two duties under the Constitution: to preside over the Senate and take the place of the President if he could not complete his term – a circumstance that had never happened in the country’s history. After being sworn into office, Vice President Tyler addressed the Senate briefly regarding his duty to preside over its deliberations:

Called by the people of the United States to preside over your deliberations, I cannot withhold the expression of the high estimate which I place on the honor which they have conferred upon me.

He was honored to fill a post once occupied by great men such as John Adams and Thomas Jefferson:

But this honor is greatly augmented by the consideration of the true character of this body – by the high order of intellectual and moral powers which has distinguished it in all past time, and which still distinguishes it – by the dignity which has for the most part marked its proceedings; and, above all, by the important duties which have devolved upon it under the Constitution.

After further praise of the Senate, he continued:

Should the spirit of faction – that destructive spirit which recklessly walks over prostrate rights and tramples laws and Constitutions in the dust – ever find an abiding place within this hall, then indeed will a sentence of condemnation be issued against the peace and happiness of this people, and their political institutions be made to topple to their foundation.

He concluded:

While I occupy this chair, Senators, I shall have frequent occasion to invoke your indulgence for my defects, and your charity for my errors. I am but little skilled in parliamentary law, and have been unused to preside over deliberative assemblies. All that I can urge in excuse for my defects is, that I bring with me to this chair an earnest wish to discharge properly its duties, and a fixed determination to preside over your deliberations with entire impartiality.

According to the *Globe*, President-elect Harrison arrived in the chamber at noon. Ten minutes later, Senate leaders escorted him to the steps on the eastern front of the Capitol, where they mounted a 15-foot tall speaking platform:

A crowd estimated at more than 50,000 people jammed into the grounds in front of the Capitol steps. Some found viewing spots in trees. Carriages carrying ladies lined up around the edges of the crowd. It was the largest turnout for a presidential inauguration yet.

The crowd erupted in loud cheers at the first sight of Harrison. The president-elect moved to a seat in the front of the platform next to Supreme Court Chief Justice Roger Taney. To their right, sat members of the diplomatic corps. Behind were members of Congress, military officers and other guests. A number of women were present

As Harrison rose to speak, earsplitting cheers rang out. Others on the speaker's platform were bundled up in overcoats and thick cloaks to protect against the chilling wind. But just as during the trip to the Capitol, Harrison wore no coat or hat, even though the piercing wind was swirling around him.

To the extent that President Harrison is remembered today, it is for a very few things, namely the slogan “Tippecanoe and Tyler Too” and his short term. He also is remembered for delivering the longest Inaugural Address – 8,845 words – in the country's history. All future Presidents, no matter how much they wished to express on

their momentous day, make a point of keeping their word count below President Harrison's total. [Shafer, Ronald G., "How William Henry Harrison invented the inaugural parade," *The Washington Post*, January 18, 2017]

The speech lasted about an hour and 45 minutes. With lengthy recollections of Roman history, President Harrison discussed the importance of the Constitution and his theories on its interpretation and implementation. Among the issues discussed was his concern about abusive power:

When the Constitution of the United States first came from the hands of the Convention which formed it, many of the sternest republicans of the day were alarmed at the extent of the power which had been granted to the Federal Government, and more particularly of that portion which had been assigned to the executive branch. There were in it features which appeared not to be in harmony with their ideas of a simple representative democracy or republic, and knowing the tendency of power to increase itself, particularly when exercised by a single individual, predictions were made that at no very remote period the Government would terminate in virtual monarchy. It would not become me to say that the fears of these patriots have been already realized; but as I sincerely believe that the tendency of measures and of men's opinions for some years past has been in that direction, it is, I conceive, strictly proper that I should take this occasion to repeat the assurances I have heretofore given of my determination to arrest the progress of that tendency if it really exists and restore the Government to its pristine health and vigor, as far as this can be effected by any legitimate exercise of the power placed in my hands.

To that end, he thought an amendment to the Constitution was needed to limit Presidents to a single term. Pending popular support for such an amendment, he said, "I give my aid to it by renewing the pledge heretofore given that under no circumstances will I consent to serve a second term."

Near the end, he paused long enough for Chief Justice Taney to administer the oath of office. President Harrison then concluded:

Fellow-citizens, being fully invested with that high office to which the partiality of my countrymen has called me, I now take an affectionate leave of you. You will bear with you to your homes the remembrance of the pledge I have this day given to discharge all the high duties of my exalted station according to the best of my ability, and I shall enter upon their performance with entire confidence in the support of a just and generous people.

On March 24, 1841, President Harrison made his daily morning walk to local food markets. He was caught in a sudden rainstorm, and neglected to change his wet clothes when he returned to the executive mansion. Whether he contracted pneumonia as a result of the event or from some other cause, he died on April 4, 1841, after only 31 days in office.

At 68 years old, he had been the oldest person to become President, was the first President to die in office, and served the shortest term in office to date.

President John Tyler

Although candidate Harrison's campaign promises are known, Collins pointed out:

We have no idea how he would have done anything, but it's interesting to speculate how closely he would have adhered to his campaign promise that Congress, not the president, should be the principal force in setting government policy.

She pointed out that members of his Cabinet thought he would follow the Whig concept that they "should be the principal force in setting government policy." They would lead and he "would preside over their meetings but would be only one vote among the members when it came to final decisions." Collins believed that President Harrison was "too self-confident and too stubborn to comply."

President Harrison also broke with Senator Clay, who privately was concerned that health concerns might elevate Vice President Tyler to power. Therefore, shortly after the inauguration, Senator Clay met with the new President to urge him to convene an extra session of Congress during which the newly empowered Whigs could begin enacting their agenda. President Harrison polled his Cabinet, which was split on calling the session; he decided not to do so. When the President did not immediately call the session, Senator Clay wrote to him on March 13, even enclosing a draft proclamation for the purpose. He suggested that inaction would give people the impression that the new President was indecisive.

The Heidlers, in their Clay biography, wrote:

It was a risky move, to be sure, and that Clay was willing to chance it indicates how anxious he was to have Congress get to work as soon as possible. But it immediately proved to be a dreadful mistake. Already testy about what he perceived as Clay's meddling over appointments, Harrison bristled. There was to be a state dinner that evening where Clay and Harrison could have conversed but the president was angry and instead dashed off a note to Clay that began with a prickly "My dear friend" and went on from there: "You use the privilege of a friend to lecture me & I will take the same liberty with you – You are too impetuous."

The reply angered Senator Clay, who replied, after calming down, on March 15 to regret that expressing his opinion could be seen as dictating to the President:

He told Harrison not to trouble with answering.

When Harrison did not respond, the silence from the White House sent a clear message, and two days later Clay left Washington for home On the very day that Clay left Washington, Harrison abruptly relented and issued a call for the extra session, although a disturbing consultation with his cabinet over the plummeting economy, not Clay's influence, was the reason he changed his mind.

A week later, President Harrison became ill and would soon die.

What President Harrison, a Whig at odds with the party's leader, might have done can never be known. But as Senator Clay feared, President Tyler would take a very different path than his predecessor.

Vice President Tyler had been in Williamsburg, Virginia, when he learned of the President's April 4 death. After consulting with associates about his proper role, he headed to Washington, first by steamboat on the James River to Richmond, then by train to the capital, arriving on April 6 at 4 a.m. That day, he met with six members of his inherited Cabinet. Secretary of State Daniel Webster informed him that President Harrison had based major decisions on a majority vote of the Cabinet. President Tyler rejected that notion; he would "never consent to being dictated to" by Cabinet members, who were not co-equal with the President. He said that if they did not agree with his method of decisionmaking, he would accept their resignations. None resigned.

Having taken the oath of office as Vice President, he did not believe a second oath was necessary. However, on April 6, he again took the oath during a full meeting of his Cabinet, with William Cranch, Chief Judge of the Circuit Court of the District of Columbia, presiding. [Crapol, Edward P., *John Tyler, the Accidental President*, The University of North Carolina Press, 2006]

Because he was the first Vice President to become President following the death of his predecessor, contemporaries were uncertain if he was an acting or temporary President and whether he had the full powers of the presidency. Critics would refer to him as His Accidency.

He had been an odd choice for a candidate of the party supporting Henry Clay's American System that included internal improvements and high tariffs. He balanced the national ticket because he was from the Nation's most populous State, Virginia, and, as a slave owner, he appealed to voters who feared that Harrison might have abolitionist tendencies. However, as reflected in his statements during internal improvement debates in the Senate, he believed in a limited central government with virtually no role in internal improvements in the States. When he became President, he had few allies in the Whig Party and, since he retained President Harrison's officials, none in the Cabinet.

Although he did not have an opportunity to deliver an Inaugural Address, he issued a statement to the people of the United States on April 9, 1841, upon assuming office. After lamenting the circumstances that elevated him to the presidency, he discussed foreign affairs, and other matters, including:

In all public expenditures the most rigid economy should be resorted to, and, as one of its results, a public debt in time of peace be sedulously avoided The appropriations should be direct and explicit, so as to leave as limited a share of discretion to the disbursing agents as may be found compatible with the public service

The institutions under which we live, my countrymen, secure each person in the perfect enjoyment of all his rights. The spectacle is exhibited to the world of a

government deriving its powers from the consent of the governed and having imparted to it only so much power as is necessary for its successful operation. Those who are charged with its administration should carefully abstain from all attempts to enlarge the range of powers thus granted to the several departments of the Government other than by an appeal to the people for additional grants, lest by so doing they disturb that balance which the patriots and statesmen who framed the Constitution designed to establish between the Federal Government and the States composing the Union. The observance of these rules is enjoined upon us by that feeling of reverence and affection which finds a place in the heart of every patriot for the preservation of union and the blessings of union – for the good of our children and our children's children through countless generations.

Congress convened on March 31, 1841, for the special session that President Harrison had called. With guidance from Senator Clay, Congress took the opportunity to approve a bill to resurrect the Bank of the United States. President Tyler vetoed the bill on August 16, 1841, because he did not believe the Constitution allowed the Federal Government to operate a corporation. Congress passed a second bill designed to address President Tyler's concerns.

His Cabinet urged him to sign the new bill, but he vetoed it on September 9, 1841. As a result, the Cabinet resigned, with the exception of Secretary Webster, who was involved in delicate negotiations with Great Britain over the Canadian/U.S. border in Maine. Two days after the second veto, the Whig Party expelled President Tyler.

In short, he would block the Whig Party agenda, including distribution of revenue from public lands sales to the States for internal improvements.

He had spoken in vaguely favorable terms of distribution of land sales revenue to the States, but he did so only on the assumption that Federal revenue issues had been resolved. Senator Clay and his allies secured passage of a distribution bill in September 1841 – after a lengthy and contentious debate – addressing the rights of present and future occupants of public land, with distribution of land sales revenue apportioned to the States based on population. The States could use the revenue for new internal improvements or to retire debt on past projects – still a problem since the start of the Panic of 1837. President Tyler signed the bill on September 4, 1841.

On December 7, 1841, President Tyler sent the traditional message to Congress. He expected that as of January 1, 1842, the Treasury would have a budget deficit of \$627,557.90. While the Treasury was stabilizing, the States had problems stemming from debt incurred primarily for increased investment in internal improvements during the Jackson years:

Nor can I fail to advert in this connection to the debts which many of the States of the Union have contracted abroad and under which they continue to labor. That indebtedness amounts to a sum not less than \$200,000,000, and which has been retributed to them for the most part in works of internal improvement which are destined to prove of vast importance in ultimately advancing their prosperity and

wealth. For the debts thus contracted the States are alone responsible. I can do no more than express the belief that each State will feel itself bound by every consideration of honor as well as of interest to meet its engagements with punctuality. The failure, however, of any one State to do so should in no degree affect the credit of the rest, and the foreign capitalist will have no just cause to experience alarm as to all other State stocks because any one or more of the States may neglect to provide with punctuality the means of redeeming their engagements. Even such States, should there be any, considering the great rapidity with which their resources are developing themselves, will not fail to have the means at no very distant day to redeem their obligations to the uttermost farthing; nor will I doubt but that, in view of that honorable conduct which has evermore governed the States of the Union and the people of the Union, they will each and all resort to every legitimate expedient before they will forego a faithful compliance with their obligations.

He discussed the country's money supply, which had been disrupted by several factors:

This is the more to be regretted and the indispensable necessity for a sound currency becomes the more manifest when we reflect on the vast amount of the internal commerce of the country. Of this we have no statistics nor just data for forming adequate opinions. But there can be no doubt but that the amount of transportation coastwise by sea, and the transportation inland by railroads and canals, and by steamboats and other modes of conveyance over the surface of our vast rivers and immense lakes, and the value of property carried and interchanged by these means form a general aggregate to which the foreign commerce of the country, large as it is, makes but a distant approach.

(Senator Clay resigned on March 31, 1842, succeeded by former Senator Crittenden, who had served as Attorney General during the Harrison-Tyler Administrations until resigning in protest. With an eye on the Whig Party's presidential nomination in 1844, Clay continued to work behind the scenes from Kentucky, through Senator Crittenden and other allies, to influence congressional proceedings.)

As was usual, his message was accompanied by reports from the departments, including Secretary of War John C. Spencer, who had assumed that office on October 12, 1841. He included Colonel Totten's report of November 19, 1841, on the work of the Engineer Department. The Chief Engineer provided a summary of the status of the Cumberland Road:

National road.- No appropriation having been made for the continuation of the Cumberland road in Ohio, Indiana, and Illinois, since the year 1838, the operations have been entirely suspended, the business closed, and the officers ordered to other stations. Much of the road being left in an unfinished state, it is liable to be washed and worn away; unfinished structures upon the road are exposed to destruction; and the longer the resumption of operations is deferred, the greater must be the cost of final completion.

An estimate is submitted, herewith, for the continuation of the road in each of these States; and if it be the intention of the government to prosecute this work, an early appropriation is certainly recommended by every consideration of economy and sound policy.

The annexed reports . . . of the officers heretofore intrusted with the superintendence of this work, give a history of its progress. They contain statements showing the cost of the finished and the expenditures upon the partly finished portions of the road; they also contain estimates for its entire completion, together with other matters of interest connected with the work, and to which your attention is respectfully invited.

(In the next few years, Colonel Totten repeated this language on the National Road, minus the reports from the former superintendents.)

Captain Dutton, writing on April 6, 1841, explained that the Ohio segment of the road was $224\frac{3}{4}$ miles long, of which 171 miles had been completed, from the Ohio River to Springfield, and taken over by the State. Total expenditures in the State since the first appropriation in 1825 totaled \$2,077,202.95, including \$129,543.77 on the remaining segment, which remained in an unfinished state.

He included a table showing the cost of the finished macadam segments in Ohio:

It will thus be seen that the average cost per mile of the part completed is \$11,258.82; that the cost of macadamizing nearly equals one-half of the whole cost; that the cost of bridging and masonry is nearly equal that of opening and grading; and that the contingencies amount to nearly $3\frac{1}{2}$ per cent. of the whole cost.

He estimated that completing the road to macadam standards would cost \$646,000, which he suggested dividing over 3 years:

- Year 1: \$295,000
- Year 2: \$233,000
- Year 3: \$118,000

He concluded his report:

I am entirely satisfied, from experience, that, with the plan of construction adopted for the national road, as explained herein, the nature of the soil over which it passes, and the absence of materials for masonry and macadamizing within a convenient distance of the road, except at a few points only, it would be impracticable to construct it, in such a manner as to fulfil the object of a great national thoroughfare, for a less average cost per mile than that stated above.

Major Ogden commented in his report on Indiana and Illinois about the cost of keeping the macadam road in shape in Ohio:

The average cost of macadamizing in Ohio has been less than \$6,000, and yet she has had to make appropriations from her treasury to keep it in repair – the tolls being insufficient for that purpose.

More on topic, Major Ogden explained that in Indiana, only 9 miles had been finished:

- In and near Richmond: 2 miles and 270 rods,
- In Centreville: 103 rods in Centreville,
- In and near Indianapolis: 4 miles and 237 rods, and
- Near Terre Haute: 1 mile and 50 rods near Terre Haute.

He explained the reason for the split mileage:

With a view to making the road immediately available for the Western emigration, and bringing the public lands on and near it speedily into the market, it was cleared and partly grubbed throughout the State; next, to get the mail stages on it, it was partially bridged, and the level parts of it graded.

The policy on working on the whole extent of the road was continued until 1836, when the operations were confined to one point until 1837, and then extended to three, viz: Richmond, Indianapolis, and Terre Haute.

In March 1839, by direction of the Secretary of War, I submitted a project for continuing the operations from the present finished portion, near Richmond, westward, and completing the road as the work progressed. This project was approved; but, no appropriation for the continuation of the road having been made since that time, it has not yet been carried into effect.

He thought that turning the road over to the State to be completed without a macadam pavement would be advantageous to the United States and Indiana:

[For] the United States, by saving the amount of the estimate and the contingencies incident to the work, in all \$1,832,272.20 – to the State of Indiana, in greatly reducing the expense of keeping the road in repair. The wear of the macadamizing on the finished parts of the road in Ohio has heretofore been estimated at 15 per cent. per annum; but as it will be some time before there is the same amount of travel on the road in Indiana, we will estimate it at 10 per cent., from which the following result is obtained:

To keep the macadamized part of the road in repair will require \$177,242.95 per annum, when the graded road can be kept in good order for from fifteen to twenty thousand dollars; or, at the extreme, suppose one man is employed to keep each mile of the road in order, at \$365 per year, it will amount to but \$23,585.

Major Ogden described conditions in Illinois:

The construction policy in Indiana and Illinois had been the same:

The country through which the road passes from the Indiana State line to Vandalia may be considered as table land, intersected by numerous streams, the beds of which are from eighty to one hundred feet below the general surface; smaller streams break into them in all directions, forming knobs and ridges in profusion, and without arrangement. The making of a road through such a country is necessarily attended with great trouble in location and expense in construction.

For fourteen miles from the line the streams are numerous, and the country consequently very much broken. From then to Vandalia they are not so frequent, and leaving a level country (principally prairie) between them, varying in distance from two to fifteen miles.

The river bottoms are generally wide, and subject to frequent and great inundations, requiring high embankments, and frequently extra bridges.

Overall, 13 miles had been finished from the Indiana State line to the 14th mile, with another 17 miles completed from the 73d mile to Vandalia. The total cost of finishing the two segments was \$379,317.75 (or \$12,643.92 per mile). For the unfinished portions, expenditures thus far had totaled \$263,286.05, mostly for opening/grading and bridging/masonry (average: \$4,388.10 per mile).

He estimated that completing the road in Illinois would cost \$1,432,138.50, with the largest cost attributed to macadamizing (\$928,633.00).

The grading and bridging could be completed in 2 years at a cost of:

- Year 1: \$190,690.76
- Year 2: \$229,551.43

He recalled that the appropriation for the road in 1834 required “an officer of the corps of engineers should be selected to superintend the construction of, and make the disbursements on, the road in Indiana and Illinois.” He recommended that if operations on the road were to resume, “exertions be made to have this proviso repealed, in order that each State may be placed under a separate superintendent.” [*Message from the President of the United States to the Two House of Congress, 27th Congress, 2d Session., Ho or Reprs. Executive, Doc No. 2*]

By the time the British author, Charles Dickens, visited the United States on a speaking tour in 1842, President Tyler had alienated all parties. While in Washington, Dickens visited the Executive Mansion in March. An “official gentleman” arranged the visit for the famed author. They found many people also waiting. “The greater portion of this assemblage,” Dickens wrote of the visit, “were closely eying the movables, as if to make quite sure that the President (who was far from popular) had not made away with any of the furniture, or sold the fixtures for his private benefit.”

Finally, “a black in plain clothes and yellow slippers,” spotted the “official gentleman” and escorted them into a waiting room along with 15-20 other people:

We had not waited in this room many minutes before the black messenger returned, and conducted us into another of smaller dimensions, where, at a business-like table covered with papers, sat the President himself. He looked somewhat worn and anxious – and well he might: being at war with everybody – but the expression of his face was mild and pleasant, and his manner was remarkably unaffected, gentlemanly, and agreeable. I thought that, in his whole carriage and demeanor, he became his station singularly well. [Dickens, Charles, *American Notes: A Journey*, From International Publishing Corporation, 1985]

Another account, pulled together from descriptions in other sources, provides additional details:

The morning after Dickens arrived in Washington, D.C. in March 1842, he was taken to the White House for an audience with President Tyler. The interview ranks as one of the all-time non-events. “Is this Mr. Dickens?” Tyler asked. “Sir, it is,” Dickens replied. “I am astonished to see so young a man,” said the fifty-one-year-old president to the thirty-year-old novelist. He added: “I am happy to join with my fellow citizens, warmly, in welcoming you to this country.” No further words were spoken. The two men shook hands, seated themselves near a hot stove, although it was a warm day, and stared at each other. Finally, Dickens rose, saying he would use up no more of the president’s valuable time which he assumed must be fully occupied. This polite sarcasm went unnoticed.

Dickens also attended one of the president’s receptions where to his annoyance “he became the main object of attention.” An “immense crowd” ignored Tyler and surrounded Dickens.

While in Washington, Dickens also met Representative and former President John Quincy Adams and was “astonished” by the former President’s “freshness, vigor, and intellect.” He also met Senator Henry Clay, describing the perennial presidential hopeful as “perfectly enchanting; an irresistible man.” [Meckier, Jerome, “Dickens’s Presidents,” *Dickens Quarterly*, June 2018]

(Dickens had the misfortune of visiting the United States during the terms of two of the country’s worst Presidents, both of whom had succeeded a President who died in office. In 1868, Dickens visited the United States, again on a speaking tour. In Washington during the first week of February for a week of readings, Dickens met President Andrew Johnson, who had reserved an entire row of seats for himself, his family, and other officials. On Dickens’ birthday, February 7, he met President Johnson. The author described the President as “a man of very remarkable appearance indeed, of tremendous firmness of purpose. Not to be turned, or trifled with.” He added, “each of us looked at each other very hard, and each of us managed the interview (I think) to the satisfaction of the other.” [Smith, Emily, “A Very Dickens Birthday,” Charles Dickens Museum, posted on February 2, 2018])

The Veto Power

Never really a believer in the Whig philosophy, President Tyler regularly battled Whig legislation reflecting Henry Clay's American System. With the central government running deficits in the wake of the Panic of 1837, he could accept tariff increases, but not distribution of revenue to the States for infrastructure or any other purpose. He explained his views on distribution in a message on his veto of a tariff bill on June 29, 1842:

I regard the suspension of the law for distributing the proceeds of the sales of the public lands as an indispensable condition. . . . Who at the time foresaw or imagined the possibility of the present real state of things, when a nation that has paid off her whole debt since the last peace, while all the other great powers have been increasing theirs, and whose resources, already so great, are yet but in the infancy of their development, should be compelled to haggle in the money market for a paltry sum not equal to one year's revenue upon her economical system?

Professor Hill explained President Tyler's views on rivers and harbors bills:

President Tyler and his secretary of war recommended that Congress adopt vigorous measures for improving major western rivers and lake harbors President Tyler granted that funds for rivers and harbors were being judiciously spent but cautioned that Congress must appropriate only for improvements of a demonstrably national character. To receive his approval, river and harbor projects had to pass a strict constitutional test: necessity for the safety of interstate or foreign commerce. Since the Topographical Bureau presented only estimates approved by the President, Congress was called upon to consider only projects passing this test.

With these limits in mind, 2 of his 10 vetoes were of appropriations for river and harbor projects. On June 11, 1844, he sent a veto message to Congress of "An act making appropriations for the improvement of certain harbors and rivers." The Constitution, he

said, "expressly reserves to the States all power not delegated":

No such surrender of jurisdiction is made by the States to this Government by any express grant, and if it is possessed it is to be deduced from the clause in the Constitution which invests Congress with authority "to make all laws which are necessary and proper for carrying into execution" the granted powers. There is, in my view of the subject, no pretense whatever for the claim to power which the bill now returned substantially sets up. The inferential power, in order to be legitimate, must be clearly and plainly incidental to some granted power and necessary to its exercise.

The authority exercised in the bill supposedly came from the granted power "to regulate commerce with foreign nations, among the several States, and with the Indian Tribes":

. . . the plain and obvious meaning of this grant is that Congress may adopt rules and regulations prescribing the terms and conditions on which the citizens of the United States may carry on commercial operations with foreign states or kingdoms, and on which the citizens or subjects of foreign states or kingdoms may prosecute trade with the United States or either of them. And so the power to regulate commerce *among the several States* no more invests Congress with jurisdiction over the water courses of the States than the first branch of the grant does over the water courses of foreign powers, which would be an absurdity.

In general, using Federal revenues to improve navigation of the rivers “would be for the most part productive only of local benefit”:

There can not, in fact, be drawn the slightest discrimination between . . . improving the streams of a State under the power to regulate commerce and the most extended system of internal improvements on land. The excavating a canal and paving a road are equally as much incidents to such claim of power as the removing obstructions from water courses; nor can such power be restricted by any fair course of reasoning to the mere fact of making the improvement. It reasonably extends also to the right of seeking a return of the means expended through the exaction of tolls and the levying of contributions. Thus, while the Constitution denies to this Government the privilege of acquiring a property in the soil of any State, even for the purpose of erecting a necessary fortification, without a grant from such State, this claim to power would invest it with control and dominion over the waters and soil of each State without restriction. Power so incongruous can not exist in the same instrument.

He also objected to the bill’s “blending appropriations for numerous objects but few of which agree in their general features.” Some projects might receive his sanction as national in scope. For example, one of the projects, the Delaware Breakwater, was “an improvement which looks to the security from the storms of our extended Atlantic seaboard of the vessels of all the country engaged either in the foreign or the coastwise trade, as well as to the safety of the revenue.” By contrast, “the same bill embraces improvements of rivers at points far in the interior, connected along with the trade of such river and the exertion of mere local influences.”

As a contrast, the message noted that at the same time, he was signing a bill appropriating funds for improving the Mississippi River and its tributaries. “The Mississippi occupies a footing altogether different from the rivers and water courses of the different States.” It did not belong to any State, but “is reserved as a great common highway for the commerce of the whole country.”

The key was to make the distinction between national objects and those benefiting local or private interests. In closing, therefore, he cautioned, “Every system is liable to run into abuse, and none more so than that under consideration; and measures can not be too soon taken by Congress to guard against this evil.”

The House attempted to override the veto on June 11, 1844, but came up short, 104 to 84, of the necessary two-thirds.

Still Trying to Advance the Road

Friends of the Cumberland Road had not given up hope of additional appropriations to complete work on the project.

On January 3, 1844, Representative Lewis Steenrod, a Virginia Democrat, introduced a bill, H.R. 10, appropriating funds for continuation of the Cumberland Road in Ohio, Indiana, and Illinois, and erection of a bridge at Wheeling. The bill proposed \$100,000 for work in Ohio, and \$150,000 each for Indiana and Illinois. All the sums “shall be paid out of any money in the treasury not otherwise appropriate.” The bill did not include the phrase on reimbursement from the two-percent fund. It was read twice and referred to the Committee on Roads and Canals.

The following day, Senator Edward A. Hannegan, a Democrat from Indiana, introduced a comparable bill appropriating the same amounts for continuation of the Cumberland Road in Ohio, Indiana, and Illinois. It was read twice and referred to the Committee on Roads and Canals.

Representative Robert D. Owen, an Indiana Democrat, from the Committee on Roads and Canals reported H.R. 10 on January 12. The committee recommended approving the bill, but with appropriations reduced to \$50,000 for Ohio and \$75,000 each for Indiana and Illinois.

Senator Hannegan’s bill was taken up in a Committee of the Whole on April 3. With no amendments, the bill was “reported back to the Senate, and the question being on ordering it to be engrossed for a third reading.

Senator Crittenden said he previously had been favorable to appropriations for the Cumberland Road, but wanted to know why the bill contained “this very large appropriation, and why it should be proposed at this particular time.”

Senator Hannegan replied with “a rapid sketch” of government action on the road. He “contrasted the liberality with which means had been furnished for carrying it on when its benefits verged towards the older States and the national capital, with the tardiness and indisposition to complete the work on those portions where the benefits are to enure to the new States.”

Senator Crittenden reiterated his concerns about the “very large appropriation” and said he thought “there ought to be the fullest explanation before the Senate was called upon to pass it”:

Mr. HANNEGAN urged, with considerable force of argument, the justice of making some return to the new States for the sacrifices they had made for the benefit of the general government. What they asked they demanded as their rights – not as mendicants asking for charity. This, however, was not the hour

(near 4 o'clock) for all that could be said on the subject, as probably the bill would be further debated but, in the absence of his colleague, he now asked the bill to be passed over informally till he should be in his seat.

Senator Sidney Breese, an Illinois Democrat, argued that the new States had a right to some return "for the depreciation of their taxing power, occasioned by the exemption of public lands from taxes for five years after they were sold."

Senator George Evans of Maine, a Whig, wanted to know how much of the road was yet to be finished. He asked if the funds in the bill were to finish work previously begun or to commence new work, as well as "what was the length of the road incomplete, or to be completed by this appropriation."

Senator Hannegan referred Senator Evans to the report of the Secretary of War, adding, "Unless these appropriations were made, several bridges already constructed may fall, and many portions of the road may become so dilapidated that \$50,000 would not make the repairs which further delay may occasion."

Senator Crittenden wondered why friends of the road sought passage of the bill "without giving the information he had repeatedly solicited":

It might be that the gentlemen of the States to be benefited by the bill could not support it, and were therefore silent; but the Senate could hardly be expected to adopt it, unless upon the fullest and most satisfactory information of its necessity. It seemed to him, that while the Senate was kept in the dark the gentlemen ought not to expect it to be passed.

Senator Hannegan denied he was trying to pass the bill in the dark. The project had been debated for years, with estimates provided periodically to the Senate. "The cost of the whole route had been frequently stated to Congress, and the necessity for completing the work had been repeatedly urged in annual messages."

Senator Crittenden said that Senator Hannegan was taking the remarks "in a very different spirit from that in which they were offered." He simply wanted fuller information.

Senator Buchanan said he had always voted for appropriations to complete the Cumberland Road "when the condition of the treasury was such as to justify it – when the estimates were made, and when it was previously ascertained how much should be expended on the road." That was the case even though his own State, Pennsylvania, "had always considered that this road was an injury instead of a benefit to her. It was a rival road to her own improvements":

He intended, if all things turned out properly, and if he could have the necessary information, to vote for the completion of the Cumberland road; but he would never do so upon the principle laid down by his friends from Illinois and Indiana, [Messrs. Hannigan and Breese,] that there was an obligation on the part of the federal government to complete that road because the new States had agreed to

exempt from taxation lands within their borders by the government for five years after such sale. That measure has been a benefit to the new States. It had promoted the sale of the lands, and the settlement of those States. It had been, therefore, a greater benefit to those States than to the federal government. He disclaimed any such obligation.

He also objected to the portion of the Senate bill that called for reimbursement from the two-percent fund:

This was going rather too far, when it was well known that we had already expended more than ten, fifteen, or twenty times the whole amount of that fund in making roads in the new States.

Upon receipt of “proper information” about the road and the state of the Treasury, he was prepared to vote for the bill, even to extend the road to the Mississippi River, “but not because he ever expected to receive any benefit from the two per cent. fund.” Like Senator Crittenden, he wanted “more light upon the subject.”

Whig Senator White of Indiana had now returned to his seat, having missed the earlier part of the debate. He was, he said, “certainly surprised” by Senator Buchanan’s comments”:

He could give him some information; it was, that this improvement had added 50,000 inhabitants to the city of Philadelphia. He regretted that, notwithstanding all the benefits Pennsylvania had received from this great work, that State had, according to the account given by its distinguished senator, yielded to it but a grudging support.

Senator Buchanan denied the State had given only grudging support. It had supported the road “from patriotic motives.” He trusted that Senator White would provide the desired information.

Senator White responded “at considerable length.” He said that Philadelphia had been “the recipient of nearly all the travel on the road, and ought to take the deepest interest in its completion.” He cited improvements elsewhere in the country “to show the necessity of keeping pace with them, by continuing and completing the sources of intercommunication which she had with the West, and all the intermediate country tributary to her by means of the great national thoroughfare.”

Senator Breese provided the desired information by reading from previous congressional documents.

Because Senator Crittenden thought additional information was needed, Senator Hannegan proposed postponing further debate.

Debate resumed on April 5, but before the Senate could vote on whether to order the bill to be engrossed and read a third time, Senator Crittenden said he thought the bill should

be amended to limit “the grading of the road with stone . . . to 20 feet; otherwise the cost would be a great deal too much.”

Senator White pointed out that the road had been to 80 feet wide, with that width figured into the estimates. He was confident, however, that “the work could now be done so much cheaper than when the estimates were made, that a considerable saving in expense might be expected.”

Senator Crittenden said he had “a sincere disposition” to help the friends of the Cumberland Road on this point:

He explained the cost of making roads in Kentucky, with broken stone, which was about \$7,000 to \$8,000 a mile; while the cost of this road could not fall short of \$15,000, according to the lowest estimate of the gentlemen themselves. He believed, if the cost were not reduced, the road never would be finished, at least by the general government.

Senator James Semple of Illinois, a Democrat, said that if such a motion were made, he might be inclined to support it.

Senator Benjamin Tappan, an Ohio Democrat, moved to amend the bill to construct a bridge over the Ohio River at Wheeling “such as would not obstruct the navigation of the river.” The United States, he said, had never completed its contract to build the Cumberland Road to the State of Ohio; it ended in Virginia. He pointed out that “there was an island, also belonging to Virginia, between Wheeling and the Ohio shore, over which, and the river itself, the road should be carried, to reach Ohio.

Senator Spencer Jarnagin, a Whig from Tennessee, thought that the bridge should be included in a separate bill, subject to securing estimates of cost before the Senate was asked to vote on it.

Senator Tappan said that an estimate had been secured for the bridge and was available in House documents. He considered the present bill “peculiarly appropriate” to compensate for the lost tax revenue.

If the measure included the bridge, Senator Buchanan said he would have to vote against it. The Pennsylvania State Legislature “had adopted the resolution of instruction upon the gravest consideration.” He did not say so, but as noted earlier, Pennsylvania was strongly opposed to a bridge across the Ohio River at Wheeling because it might divert commercial traffic from a port closer to Pittsburgh.

Although Senator Buchanan agreed that a suspension bridge could be built high enough to allow river traffic to pass under it, he noted that the amendment called simply for a bridge that would not interfere with navigation. Senator Tappan asked if Senator Buchanan would vote for the amendment if the wording were changed to “suspension bridge,” but the answer was that he would not “because he did not consider it practicable, without interfering with the navigation of the river.”

Louisiana Senator Porter pointed out a report some years earlier had shown that “a suspension bridge would not answer, because it would have to be so high in the air that the greatest danger of its destruction would be from storms.

Senator White also hoped the amendment would be withdrawn, with “the matter to be disposed of by the bill now pending in another branch of Congress.”

The Senate rejected the Tappan Amendment.

Senator Breese informed his colleagues that covering the road in Illinois with stone had been abandoned in 1836:

There was no hope of ever being able to apply stone to the grading of the road in that State. All that was required was, to open the road 80 feet. Grade it 30 feet, and build bridges and culverts; the cost of which (yet to be incurred,) was estimated at \$810,000. \$742,445 had already been laid out on the road in Illinois. The expenditure in Ohio had been \$2,077,000; in Indiana, \$1,128,000. He read several extracts from the report on the subject, and sent to the table remaining portions, to be read by the secretary of the Senate.

After the secretary read the documents, the Senate agreed on a width of 16 feet for the travel lane.

Senator Semple moved an amendment to restrict the Illinois appropriation to opening and grading the road before stone shall be applied.

When Senator King objected to the “enormous expense” of adding 9 inches of stone on any part of the road that could increase the cost to \$3 million in Indiana, Senator Hannegan replied “with a view of showing that the lavishness of the expenditures on the Cumberland road, heretofore made, had been owing to the manner in which Congress itself had prescribed the doing of the work.” His bill guarded against such an outcome; he was confident the final cost in Indiana would be \$1,400,000.

The Senate then adopted the Semple Amendment before adjourning.

On May 6, the Senate voted, 23 to 12, on ordering the bill to be engrossed for a third reading. After that was done, the Senate passed the bill, 20 to 11. The bill was forwarded to the House of Representatives, which referred the bill to the Committee on Roads and Canals. The committee reported the bill to the House, without amendment, on May 15.

The House adjourned the first session of the 28th Congress on June 17 without acting on the Senate bill.

President Tyler’s Final Session

The 28th Congress returned for a short session on December 2, 1844, with the session ending on March 3, 1845.

Outgoing President Tyler sent his final annual message to Congress on December 3, 1844. As usual, he discussed foreign relations, including efforts to secure the addition of the Republic of Texas, formed in 1836 after securing independence in a war with Mexico, to the union. The economy was rebounding, as was the general Treasury. The country had been forced to pay for its activities by securing loans and issuing bonds. However, the improved condition of the Treasury meant that “an estimated surplus of upward of \$7,000,000 over and above the existing appropriations will remain in the Treasury at the close of the fiscal year.” This milestone, he said, demonstrated that “under a well-regulated system of finance the Government has resources within itself which render it independent in time of need, not only of private loans, but also of bank facilities”

The anticipated surplus prompted him to warn Congress about the need to preserve “a sound and healthy condition”:

The dangers to be guarded against are greatly augmented by too large a surplus of revenue. When that surplus greatly exceeds in amount what shall be required by a wise and prudent forecast to meet unforeseen contingencies, the Legislature itself may come to be seized with a disposition to indulge in extravagant appropriations to objects many of which may, and most probably would, be found to conflict with the Constitution. A fancied expediency is elevated above constitutional authority, and a reckless and wasteful extravagance but too certainly follows.

Turning to internal improvements, he said he was not opposed to all such work:

The appropriations made by Congress for the improvement of the rivers of the West and of the harbors on the Lakes are in a course of judicious expenditure under suitable agents, and are destined, it is to be hoped, to realize all the benefits designed to be accomplished by Congress. I can not, however, sufficiently impress upon Congress the great importance of withholding appropriations from improvements which are not ascertained by previous examination and survey to be necessary for the shelter and protection of trade from the dangers of storms and tempests. Without this precaution the expenditures are but too apt to inure to the benefit of individuals, without reference to the only consideration which can render them constitutional – the public interests and the general good.

President Tyler ended his final message to Congress with these words:

Under these circumstances and with these anticipations I shall most gladly leave to others more able than myself the noble and pleasing task of sustaining the public prosperity. I shall carry with me into retirement the gratifying reflection that as my sole object throughout has been to advance the public good I may not entirely have failed in accomplishing it; and this gratification is heightened in no small degree by the fact that when under a deep and abiding sense of duty I have found myself constrained to resort to the qualified veto it has neither been followed by disapproval on the part of the people nor weakened in any degree their attachment to that great conservative feature of our Government.

The Senate, which had passed an appropriation bill for the Cumberland Road in the previous session that the House had not completed action on, was not done with the subject. On December 5, Senator White introduced a bill for continuation of the Cumberland Road in Ohio, Indiana, and Illinois. He reported on January 2 that the Committee on Roads and Canals approved the bill without amendment and with a recommendation that the Senate pass the bill. On January 20, the Senate ordered the bill to be engrossed and read a third time.

The Senate considered passage of the bill on January 22. Senator White informed his colleagues that the bill was the same as the bill passed in the first session of the 18th Congress, but that it had failed in the House when time ran out. "The appropriation proposed by the bill was recommended by the Secretary of War and chief of the topographical bureau."

Connecticut Senator Niles stated he wanted the ayes and the noes, and did not want to give a speech. "He had too much experience here, and had been too careful an observer of the action of this government, to consume the time of the Senate in the discussion of a constitutional question, or to oppose the passage of any bill [for] a constitutional objection":

This subject was an ancient one, almost as old as the government; yet the repeated action of Congress had not changed the question. A wrong, however often repeated, did not, by such repetition, become a right.

He pointed out that the bill did not contain the usual reference to reimbursement from the two-percent fund, an issue that he said had prompted vetoes and threats of vetoes in past years. He also questioned the national stature of the road:

Whatever it once may have been, this road now had become a mere local road, beneficial only to the States through which it passes. The public travel and trade had found other channels, and this road had become only a local one.

His colleagues recognized the value of attaching the word "national" to local interests:

We now have an instance of the kind before us: this road is called national, although, in fact, it is local; but it is attempted to attach to it the odor of nationality, so as to bring it within the pale of the constitution and give it a character of general interest.

When, he asked, would appropriations for this road end? Would it stop at the Mississippi River, the Pacific Ocean, or even the Oregon Territory? He continued:

It was some years since admitted by a distinguished senator, not now here, friendly to this object, and who believed that there was power in this government to prosecute works of internal improvement, that this road ought to have a limit; and that if appropriations were continued to be made, they should have a reference to a termination of the work. But now we have no limit, no prospect ahead of ever bringing these appropriations to a close.

He asked for the vote so he could record his vote against the bill.

Senator White felt he had to respond but not on the constitutional issue. He pointed out that the bill had passed the Senate in the first session by “a large majority, and it failed in the House merely for the want of time for its consideration”:

The Senate would recollect that, last session, the dimensions of the road were changed, as in the present bill, so as to contract it within a foot of one half of its former width, and that, too, in the portion comprising the most expensive item of its construction – the Macadamized portion. The road proposed to be finished by this bill had been long since commenced, and was in a dilapidated condition.

He then alluded to the lavish expenditure of money for improvements in the northern and middle portions of the country – particularly for stock in the Chesapeake and Ohio canal – and maintained that this appropriation for the West should not be withheld.

The Senate, by a vote of 25 to 14, approved the bill.

Two days later, on January 24, the House read the Senate bill for the first and second time and referred it to the Committee on Roads and Canals.

While the House would occasionally consider the bill, Representative John W. Tibbatts, a Kentucky Democrat, took an alternative approach on February 27. The House was considering a bill appropriating funds for improvement of navigation on specified rivers. Representative Tibbatts moved to strike the entire bill and insert a substitute with the addition of a single item of appropriation. Later, with the House in the Committee of the Whole, he moved to modify his substitute amendment. The substitute listed dozens of projects, mostly involving harbor and river projects, but including near the end of the list:

For continuing the work upon the Cumberland road through the States of Ohio, Indiana, and Illinois, in equal proportion in each of said States, three hundred thousand dollars;

The committee approved the Tibbatts Amendment, 85 to 35, and reported it to the full House.

The House approved the substitution on February 28, 102 to 92.

The bill was considered by the Senate late on March 1 without amendment, and returned to the House, where the bill had originated, for presentation to the President.

As the Senate and House moved to the end of the 28th Congress, some attempts were made, without success, to secure a separate Cumberland Road appropriation bill. The *Globe* reported on the final moments of the session, starting with Representative George Washington Jones, a Democrat of Virginia:

Mr. G. W. JONES inquired if the President had not signed all the bills presented to him. [Cries of “Not all of them.”] There were some he hoped he would not sign.

Next, the *Globe* reported on Representative Robert C. Schenck, a Whig from Ohio:

Mr. SCHENCK moved a suspension of the rules to take up the bill for the continuation of the Cumberland road, which had passed the Senate some time since.

Mr. Weller, from the committee to wait on the President of the United States, said they had discharged their duty, and that they had been instructed, by the President of the United States, to say that he had no further communication to make to Congress, and to express to the members of both Houses his ardent desire that they might reach their respective homes in safety

It was now ten minutes past two.

Following a thank you from the Speaker of the House, the House adjourned *sine die*.

As the comment from Representative Jones indicated, President Tyler had been presented with dozens of bill for his signature, as was traditional, on the last full day of his term. He signed nearly 40 such bills. However, as the cries of “not all” suggested, he neglected to sign one of them: the bill making appropriations for the improvement of navigation on certain harbors and rivers that included the amendment funding continuation of the Cumberland Road. By not signing the bill on March 3, he exercised a pocket veto that required no explanation of his reason. The next day, he would be out of office and the bill was dead.

A small final amount of funding for the Cumberland Road was included in “An Act making appropriations for the civil and diplomatic expenses of Government for the fiscal year ending the thirtieth day of June, eighteen-hundred and forty-five, and for other purposes.” The Act, signed by President Tyler on June 17, 1844, included an appropriation of \$1,359.81 for “arrearages on account of a survey for an extension of the National Road to Jefferson, Missouri.”)

Throughout his term, President Tyler had supported expansion of the United States across the continent. As he left office, he had nearly secured the inclusion of the Republic of Texas, but his successor would have to finalize the technical details of the deal.

On February 20, 1845, he issued a historic veto on a bill funding revenue cutters and steamers. The issue behind the veto was a contract dispute. Contracts had been let for construction of “two revenue boats, to be propelled by wind or steam, as occasion may require – the one for the coast of Georgia and the other for Mobile Bay, to be used as dispatch vessels if necessary.” The bill asserted “that no revenue cutter or revenue steamer shall hereafter be built (excepting such as are now in the course of building or equipment) nor purchased unless an appropriation be first made by law therefor.” Because the two revenue boats were contracted for but not under construction, President

Tyler wanted to avoid any ambiguity about their validity. He vetoed the bill to protect “the sanctity of contracts regularly entered into by the Government.”

On March 3, the House and Senate voted to override the veto, thus enacting the bill without the President’s signature. Thus, President Tyler became the first President to have a veto overridden by Congress.

After his eventful but unfulfilling single term as an “accidental” President whose principles and interpretation of the Constitution often clashed with the party that chose him for political balance but expelled him, he returned to Virginia.

At the start of the Civil War, former President Tyler sided with his State and the southern confederacy. He won a seat in the Provisional Confederate Congress, serving from August 1, 1861 until his death on January 18, 1862, at the age of 71.

President James K. Polk

Annexation of Texas was one of the leading issues as the political parties chose their nominees for President in 1844 – with the issue blending with the central, divisive issue of the times: extension of slavery.

The Whig Party turned to its leading light, Henry Clay, as its nominee. Former Senator Theodore Frelinghuysen of New Jersey was his running mate. The party’s platform did not mention internal improvements, but did cite “the distribution of the proceeds of the sales of the public lands.” Clay had always advanced this idea as, in part, a way of encouraging internal improvements at the State level.

Initially, former President Van Buren was the leading candidate for the Democratic Party’s nomination, but his support diminished when he opposed the Tyler plan for Texas annexation because it might undermine the north-south base of the party over the slavery issue. At the party’s convention in Baltimore, an unexpected candidate emerged as a compromise nominee after eight ballots: James K. Polk. His running mate was former Senator and diplomat George M. Dallas of Pennsylvania.

Representative Polk had left the House and served as Governor of Tennessee (October 1839-October 1841). Undermined by the Panic of 1837, he had little success during his brief tenure. He lost his reelection bid in 1841 and lost again when he sought election in 1843. Thus, the party was taking a chance with the two-time home-State loser.

The party’s platform retained the essence of the first three tenets of the Harrison/Tyler election, including the statement that “the Constitution does not confer upon the General Government the power to commence or carry on a general system of internal improvements.”

A third party candidate, James G. Birney, would have an impact on the election. The Liberty Party candidate was a former Kentucky slave owner and a leader of the American Colonization Society, which advocated voluntary shipment of slaves to a colony in Africa. However, he renounced slavery, moved to Cincinnati, and became editor of the

antislavery newspaper *The Philanthropist*. Polk biographer Walter R. Borneman explained the impact on the election:

Polk managed to straddle the tariff issue and champion Texas; Clay badly fumbled the Texas issue. But the election of 1844 was also decided by party turnout, the increased abolitionist sentiment in the North that fueled the Liberty party, and the Whigs' last minute flirtation with nativism. [Borneman, Walter R., *Polk: The Man Who Transformed the Presidency and America*, Random House, 2008]

President Tyler, as a way of securing annexation of Texas, established the "Democratic-Republican Party," and became its presidential nominee (one slogan was "Tyler and Texas"). The party did not nominate a running mate. However, with sufficient assurances from Polk and former President Jackson that annexation would be a top priority, Tyler dropped out of the race, clearing the way for his supporters to turn to Polk.

With 138 electoral college votes needed to win, Polk won 26 States easily (111 electoral votes), while Clay secured 10 States (92 electoral votes). The remaining States (Michigan, Indiana, Louisiana, Tennessee, and New York) would determine the victor. Borneman wrote:

In three, Birney and the Liberty Party were on the ballot. It is not fair to suggest that *all* of Birney's votes would have gone to Clay if Birney had not been in the race; and even if most had, it probably would not have made any difference in Michigan and Indiana. Their seventeen electoral votes went to Polk by narrow margins.

Polk won Louisiana by 699 votes to secure the State's 6 electoral college votes (voter fraud was partly responsible for the victory).

His home State of Tennessee seemed vital to Polk's prospects, but he lost the State to Clay by a 113-vote margin, leaving Polk with 134 electoral votes and Clay with 105. New York's 36 electoral college votes would determine the result:

On the ballot in the thirteen northern states, James G. Birnie and the Liberty Party received 62,300 votes, or 2.3 percent of the total cast nationwide. More than a quarter of these votes, 15,812, came in New York. Polk bested Clay in the Empire State 237,588 to 232,482, a plurality of 5,106 votes.

Had a large percentage of those Birnie votes gone to Clay, he would have secured victory in New York and nationally by the electoral vote, 141 to 134, despite losing the popular vote. Borneman quoted Abraham Lincoln, a Whig who cited Clay as his political model, as saying, "If the Whig abolitionists of New York had voted with us, Mr. Clay would now be president."

Although the electoral college vote ended up a one-sided 170 to 105, the popular vote was close, with Polk receiving 1,339,494 votes to Clay's 1,300,004.

Borneman summarized the outcome:

While the loss of Tennessee clearly rankled Polk, this third statewide loss was different from his two previous defeats. This time, instead being a defeated gubernatorial candidate, James K. Polk – Tennessee with him or not – was the president-elect of the United States.

Nashville celebrated the victory at a reception on November 29. In response, he said:

I return to you, sir, and to my fellow citizens whose organ you are, my unfeigned thanks for this manifestation of the popular regard and confidence, and for the congratulations which you have been pleased to express to me, upon the termination and result of the late political contest. I am fully sensible, that these congratulations are not, and cannot be, personal to myself. It is the eminent success of our common principles which has spread such general joy over the land. The political struggle through which the country has just passed has been deeply exciting. Extraordinary causes have existed to make it so. It has terminated – it is now over – and I sincerely hope and believe, has been decided by the sober and settled judgment of the American people.

In exchanging mutual congratulations with each other upon the result of the late election, the Democratic party should remember, in calmly reviewing the contest, that the portion of fellow-citizens who have differed with us in our opinions, have equal political rights with ourselves; that minorities as well as majorities are entitled to the full and free exercise of their opinions and judgments, and that the rights of all, whether of minorities or majorities, as such are entitled to equal respect and regard.

By majorities he was referring to the Democratic Party, and by minority he meant the Whig Party:

In rejoicing, therefore, over the success of the Democratic party, and of their principles, in the late election, it should be in no spirit of exultation over the defeat of our opponents; but it should be because, as we honestly believe, our principles and policy are better calculated than theirs to promote the true interest of the whole country.

In the position in which I have been placed, by the voluntary and unsought suffrages of my fellow-citizens, it will become my duty, as it will be my pleasure, faithfully and truly to represent, in the executive department of the government, the principles and policy of the great party of the country who have elevated me to it; but, at the same time, it is proper that I should declare, that I shall not regard myself as the representative of a party only, but of the whole people of the United States; and, I trust, that the future policy of the Government may be such as to secure the happiness and prosperity of all without distinction of party. [Speech of James K. Polk, *The Baltimore Sun*, December 9, 1844; quoting *The Nashville Union*, November 30, 1844]

As he traveled to Washington, he would give variations of this speech in towns celebrating his passage through their community.

Before heading to Washington, President-elect Polk and his wife Sarah traveled to the Hermitage to see his mentor, former President Jackson. Among other things discussed during the 2-day visit, they agreed on the makeup of the Polk Cabinet.

After a reception in Nashville, the President-elect left for Washington on February 1, aboard the chartered steamboat *China*. Following the Cumberland River, the ship took the Polk party to the Ohio River. They arrived in Cincinnati on February 6. *The Baltimore Sun* reported on the stay:

His reception at Cincinnati was quite imposing. Four steamers, crowded with passengers, left [Louisville], according to announcement at eight o'clock, and proceeding down the river, they met the mail-boat about eight miles below, from which point they escorted the President to the city, arriving at the landing between ten and eleven o'clock, where an immense crowd had assembled to witness the spectacle.

The arrival of the boats was announced to the city, and surrounding country by the roar of artillery. Soon after, the President elect, accompanied by the member of Congress elect from the Cincinnati district, and two other gentlemen, entered a barouche and were escorted by the military through the greater portion of the city to the Henrie House, where a large crowd had assembled to witness the reception.

He was then addressed by Judge Reed, who is represented to have delivered a speech descanting on all the political topics of the day, and concluding by introducing His Excellency to the "veteran Democracy of Hamilton county." The reply of Mr. Polk is said to have been most appropriate, and whilst he avoided all allusion to political topics, he stated in substance that he was NOT *the President of a party*, but of the whole people of the United States, that he had been elected by the unsought suffrages of the people, that his only desire was, through the aid of an all-wise Providence, to be instrumental in promoting the prosperity, harmony and union of the United States.

Reaching Wheeling on February 9, the party transferred to lavish carriages for the next leg of their journey along the Cumberland Road.

In Washington, Pennsylvania, the party stayed at the Mansion House on the northeast corner of Main and Chestnut Streets. Searight quoted from the *Examiner's* account of the visit in the edition of February 15, 1845:

President Polk arrived in our borough on Monday evening last, about 5 o'clock, escorted by quite a respectable number of our citizens. The President was accompanied by his lady, J. Knox Walker, his private secretary, and Master Marshall Polk, comprising the President's family; also Colonel Butler, of Kentucky, Judge Hubbard, of Alabama, and Messrs. T. K. Stevenson, J. G. Harris

and J. N. Esselman. The arrival of the President having been sooner than was anticipated, and intelligence of the same having reached us on Sabbath last, the arrangements on the part of our citizens were not so complete or extensive as they would have been under other and more favorable circumstances.

Upon the arrival of the President at the Mansion House he was addressed by Dr. Wishart, as chairman of the committee of reception, in a spirited and appropriate manner, to which the President responded to the evident gratification of the large assembly of persons who were present. In the course of his remarks, Colonel Polk alluded to the unbounded feeling of gratitude which filled his bosom for the distinguished partiality which had been extended toward him by his fellow citizens; to the great responsibility which that partiality had devolved upon him; to his implicit confidence in that power which controls the destinies of individuals as well as nations; to his determination to act for the best interests of our beloved country, and the vital importance of freedom of opinion and contrariety of sentiment among a Republican people. In concluding his remarks, the President expressed a strong desire to interchange congratulations with as many of our citizens, of all parties, as time and circumstances would permit.

After the formal reception was completed the President was conducted into the Mansion House, and during the evening was waited upon by many hundreds of our citizens, from town and country, without party distinction. Many of the ladies of our borough, with the Principal, assistant teachers and young ladies of our Female Seminary, also, called upon Mrs. Polk, whose plain, dignified and fascinating deportment and intelligent conversation rendered her company exceedingly pleasant. Mrs. Polk has certainly not been too highly complimented, by the many notices which have been bestowed upon her, as a lady most admirably suited to the discharge of the peculiar duties which await her as the wife of the President.

On Tuesday morning at 9 o'clock the President and suite left our borough, in good health and spirits, for Uniontown, at which place they remained over night.

Searight wrote about the Polk party's stay in Uniontown:

James K. Polk, with his family and traveling companions, stopped over night at The National when on his way to the capital to be inaugurated President, in the spring of 1845. A large number of citizens assembled on the occasion to meet the coming President and were addressed by him from the high steps in front of the house.

Two miles west of Piney Grove, where the Cumberland Road and old Braddock Road coincide near Grantsville, Maryland, "James K. Polk dined at the Tomlinson house in the spring of 1845, on his way to Washington to be inaugurated President." Tomlinson Tavern at Little Meadows "is an old stand; as old as the National Road." Searight added, "The occasion brought together a large concourse of mountain people, who were addressed by the President-elect."

At Cumberland, the Polk party switched to the Baltimore and Ohio Railroad for the remaining trip to Washington. When the train reached Relay, Maryland, on February 13, the party was greeted by an artillery salute by a Baltimore delegation and 2,000 people. (The railroad company had built Relay, the first railroad city in the country, during the days when trains were pulled by horses. At this point, trains stopped to change horses. Steam engines soon replaced the horses, but stopped in Relay for refueling.) The party that greeted the President-elect had left from the Pratt Street depot in Baltimore in the late afternoon in an extra train that carried the 42 members of the welcoming committee sent to meet the presidential party at Relay House and invite him to the city. *The Baltimore Sun* reported:

The train consisted of six cars, which were crowded to excess. The number who went out in the extra, and previously in the Frederick train, was estimated at about four hundred, and large accessions were made by the surrounding country, in all sorts of vehicles and on horseback, and also by the regular train from Baltimore city to Washington.

When the train arrived in Relay from Cumberland, the committee met President-elect Polk on the railroad platform. The head of the committee, David Stuart, “made an eloquent and impressive address to President Polk, and tendered him the hospitalities of the people of Baltimore.” The President-elect “made a brief reply, happily conceived and well expressed”:

His thanks for the invitation were delivered in a tone of sincerity, and not less sincere appeared his exhibition of feeling in reference by implication, to the democratic fidelity of Baltimore. Yet he made no mention of any party topic, nor any direct reference to the matters, or any of them, upon which parties are at issue. He appeared to be perfectly self-possessed, he was evidently somewhat moved, and while he courteously declined the invitation to visit Baltimore now, on the ground that it would be inconsistent with the arrangements of his journey to the national metropolis, he promised to avail himself of some other opportunity to accept of its hospitality.

He shook hands “with a vast multitude of enthusiastic friends and admirers.” Soon Vice President-elect Dallas arrived on the regular train from Baltimore. He met with President-elect Polk for what was believed to be the first time since the election. Shortly after, the train to Washington was announced and the two leaders, with their parties, boarded the train. It departed Relay House “amid the cheers of the excited and enthusiastic multitude.” The Baltimore extra returned the committee and others to the city:

It is proper here to observe, that the arrival and departure of both the distinguished gentlemen, and of the Baltimore committee, were signaled by repeated discharges of artillery, and that Mrs. Polk, who remained in the cars, continued to be the centre of attraction to an admiring crowd, many of whom took her by the hand, shook it with an enthusiasm not inferior in intensity to that

which greeted her fortunate husband. ["Local Matters," *The Baltimore Sun*, February 14, 1845]

The party reached Washington in the evening of February 13. Representative John Quincy Adams, who did disparaged the President-elect, wrote of the arrival in his diary:

Mr. James Knox Polk arrived last night in this city. His arrival was notified by a Democratic cannonade upon the Capitol Hill, and a Democratic escort from the depot of the railroad-cars to his lodgings at Coleman's National Hotel. He brought with him his wife and a small retinue, and was accompanied by the Vice-President elect, George Mifflin Dallas, who, coming from his residence at Philadelphia, joined him at the Relay House, nine miles on this side of Baltimore. The parade of his reception was all partisan, and a display of one Democratic member of Congress to represent each State and the Territory of the Union formed a congenial part of the cortege from the cars to his lodgings. He had affected to speak, at Nashville and at Cincinnati, of being the President of the nation, and not of a party; but he is sold soul and body to that grim idol, half albino, half negro, the compound of Democracy and of slavery, which, by the slave-representation in Congress, rules and ruins the Union. [February 14, 1845]

(President-elect Polk had been in Baltimore for the Democratic Party's nominating convention in May 1844. Candidates in that era did not attend political conventions or express an interest in the position, but Polk had not sought the nomination and did not expect to be nominated, much less selected. He attended as a member of the party. He would visit the city as President in October 1847 at the start of a tour by railroad of the Northeast.)

By 1845, the idea of an inaugural parade that had begun just 4 years earlier, was on its way to becoming traditional. The *Sun* described the scene:

Our whole population, with the mighty multitude which have assembled from every part of the Union – and from Texas too – have poured themselves out to unite in the general joy. Nor is the beautiful harmony of the occasion impured by the slightest demonstration of party predilections – men of all political preferences associate together – forget all the differences of the past – and cherish for each other an honorable friendship

The advent of the day was announced by a National salute from Capitol Hill – the aspect of the weather was unpromising, but the streets and avenues were soon thronged with persons of all sexes and classes All business was suspended – the National banner waved from all the public buildings, and many private residences were decorated with beautiful emblems of various kinds.

Signal guns at 8 a.m. summoned the troops and associations to report to their assigned spots. At 10, a burst of cannons started the troops and bands moving down Pennsylvania Avenue. Rain began to fall:

The appearance of this fine body of brave volunteers, as they were drawn up in line in front of Coleman's Hotel [the National], on Pennsylvania avenue, awaiting the embarkation of the President-elect, in his carriage, could not be surpassed by the volunteers of our own or any other country. Their beautiful uniforms, bright arms, and soldier-like deportment, strengthened the conviction of every mind, that with such soldiers, the Republican need never fear a foreign foe.

President Tyler and President-elect Polk joined the procession along the avenue. The President-elect stood most of the way, waving to the cheering crowd, which greeted them with "frequent bursts of enthusiasm." The parade included a small troop of "veteran soldiers of the Revolution, with hoary locks, and steps apparently unflinched by age"; clergy from the District and neighboring States; the members of President Tyler's Cabinet who "received many indications of the people's regard"; members of the Supreme Court; the diplomatic corps of many countries (their "various costumes were exceedingly rich and superb, and made the eye of many a gay lady assume additional brilliancy"); professors and students of Georgetown College; representatives from Alexandria (then still part of the District of Columbia); members of the 29th Congress, all preceding "citizens of the District, followed by a large cavalcade of horsemen."

Dignitaries entered the Senate chamber, with Polk, Tyler, and Dallas arriving at 11:40. First, Vice President-elect Dallas took the oath of office and addressed the Senate. Author Robert W. Merry, in his biography of President Polk, described the Vice President's statement:

At around eleven-forty five, the Senate's president pro tempore, Willie P. Mangum of North Carolina, administered the oath of office to Dallas, who then delivered a brief speech marked by appropriate democratic platitudes mixed with appropriate expressions of humility. "The citizen who it has pleased a people to elevate by their suffrages from the pursuits of private and domestic life," he intoned, "may best evince his grateful sense of the honor . . . by devoting his faculties, moral and intellectual, resolutely to their service. This I shall do; yet with a diffidence unavoidable to one conscious that almost every step in his appointed path is to him new and untried."

History doesn't record whether, as Dallas droned on, some in the audience perhaps found their minds wandering to thoughts of forthcoming political battles.

After Vice President Dallas's remarks, the dignitaries moved to the temporary platform erected over the east portico of the Capitol. Merry described the scene:

First to emerge, to "cheers of welcome," were Tyler and Polk, walking side by side but with the president-elect occupying the ceremonial position to the left of the outgoing president. A British journalist in attendance described Polk as "looking well, though thin and anxious in appearance." Behind them were their wives and behind them various dignitaries. Sarah Polk, though not a true beauty, possessed a magnetism that had served her well as a politician's wife.

At the appointed time, President-elect Polk began his Inaugural Address in a rain, looking out at a sea of umbrellas. A servant held an umbrella over the incoming President. Polk, nicknamed “Young Hickory” for his close association with the former President, explained one of the principles that would guide his administrative policy:

The Constitution itself, plainly written as it is, the safeguard of our federative compact, the offspring of concession and compromise, binding together in the bonds of peace and union this great and increasing family of free and independent States, will be the chart by which I shall be directed. It will be my first care to administer the Government in the true spirit of that instrument, and to assume no powers not expressly granted or clearly implied in its terms.

He added:

Ours was intended to be a plain and frugal government, and I shall regard it to be my duty to recommend to Congress and, as far as the Executive is concerned, to enforce by all the means within my power the strictest economy in the expenditure of the public money which may be compatible with the public interests.

He did not mention internal improvements, but these words made clear that his views had not changed since his days in the House of Representatives.

He also stated his views on tariffs, always one of the most controversial issues in the 19th century – finding the balance between the level of tariff revenue that would support government activities and the higher level that would impose sufficient protective barriers to imported goods to encourage domestic production:

I have also declared my opinion to be "in favor of a tariff for revenue," and that "in adjusting the details of such a tariff I have sanctioned such moderate discriminating duties as would produce the amount of revenue needed and at the same time afford reasonable incidental protection to our home industry," and that I was "opposed to a tariff for protection merely, and not for revenue."

He also made clear that his continental ambitions included Texas, which he discussed at length, and the territory beyond the Rocky Mountains:

The jurisdiction of our laws and the benefits of our republican institutions should be extended over them in the distant regions which they have selected for their homes. The increasing facilities of intercourse will easily bring the States, of which the formation in that part of our territory can not be long delayed, within the sphere of our federative Union. In the meantime every obligation imposed by treaty or conventional stipulations should be sacredly respected.

Chief Justice Taney administered the oath of office. “Then he was president, and another 28-gun salute roared its affirmation.” At 49, he was the youngest man to hold the office to that date. Merry continued:

The new president and the man he had just replaced left the platform, again side by side. But this time Polk occupied the ceremonial position at Tyler's right. The official parade formed up once again . . . and the president and first lady were escorted back to the White House, where they greeted visitors through much of the afternoon. The evening agenda included two inaugural balls – one at Carusi's Hall, at ten dollars a ticket; another at the National Theatre at five dollars.

History was made in another way during the ceremony. It was the first time the Inauguration was transmitted by "magnetic telegraph." Samuel F. B. Morse had strung telegraph wires from Baltimore to Washington in 1844 in time for the Democratic Party's nominating convention. As Merry explained, Washingtonians were thrilled "with the latest news of developments there":

On that rain-soaked day of Polk's inauguration, Morse had been on the platform, hunched over his little gadget, clanking out detailed descriptions of the inaugural events for an expectant crowd in Baltimore and for subsequent readers of newspaper extras rushing to the streets with unprecedented immediacy.

Senator Benton said of the device that it was "the improvement that annihilates distance."

Invitations to the inauguration had gone to ex-Presidents, but none attended. Representative John Quincy Adams, who lived in Washington, wrote in his diary that he had received the invitation, but "I did not avail myself of the Invitation" [March 4, 1845]

[“Proceedings of the Inauguration of President Polk,” *The Baltimore Sun*, March 4, 1845; “The Inauguration (2),” *The Baltimore Sun*, March 6, 1845; Merry, Robert W., *A Country of Vast Designs: James K. Polk, the Mexican War, and the Conquest of the American Continent*, Simon and Schuster Paperbacks, 2010]

According to *The Baltimore Sun* account, former President Tyler and his family were to leave Washington on March 5 on the steamship *Osceola*, but did not reach the pier in time. They instead traveled to Baltimore to catch a steamship out.

President Polk on Internal Improvements

Before the election, Polk stated that he would serve only one term, which he thought would be enough to achieve his domestic and foreign goals. As it happened, he was largely correct. For example, the Independent Treasury Act of 1846, which President Polk signed on August 6, provided for the Treasury to hold the government's money instead of in banks, as implemented by President Jackson, or corporations, as in the national banks. Borneman summarized:

In retrospect, it was somewhat ironic that a subject that had been Andrew Jackson's leading domestic issue for a decade, and that had caused John Tyler to split with the Whig party, should now be passed with so little emotion. In the end, the tariff and other legislation overshadowed it, and even some Whigs were

said to be in favor, although they dared not vote as such. Polk did not even record its passage in his usually thorough diary. Nonetheless, the Independent Treasury Act of 1846 remained in effect until 1913, when the current Federal Reserve System was created.

As seen during House debates on the Cumberland Road, President Polk believed the Federal Government had limited authority on internal improvements:

As with the issue of a national bank, Polk had allied himself early on with Old Hickory on the issue of internal improvements. Government support for such projects as roads, canals, and railroads was anathema to Jacksonian Democrats. That was the way that Henry Clay and his Whigs proposed to spend the common man's money.

The river and harbor bills were, as Borneman wrote, "the largest pieces of pork barrel legislation yet to come before the American Congress." Nevertheless, political reality caused many Democrats to believe they were "due some assistance from the public trough." Borneman quoted Representative John Wentworth of Illinois for an oft-repeated quote on the subject:

Congress should initiate as many projects as possible, thus forcing later Congresses to complete them in order to prevent the earlier appropriations going to waste.

In 1846, the House passed a rivers and harbors bill, 109 to 90, appropriating \$1,378,450 for 40 projects "many of them small harbors on the Great Lakes." Borneman pointed out that this was "an enormous amount, considering that the entire national debt was only about \$17 million." The Senate approved the bill, 34 to 16, on July 24. Four days later, the Senate approved President Polk's tariff bill securing tariffs for revenue, rather than protection. He considered the tariff bill "vastly the most important domestic measure of my administration."

But that left the rivers and harbors bill awaiting his signature. On August 3, 1846, he vetoed the bill titled "An act making appropriations for the improvement of certain harbors and rivers." He began his veto message with a summary of the projects:

On examining its provisions and the variety of objects of improvement which it embraces, many of them of a local character, it is difficult to conceive, if it shall be sanctioned and become a law, what practical constitutional restraint can hereafter be imposed upon the most extended system of internal improvements by the Federal Government in all parts of the Union. The Constitution has not, in my judgment, conferred upon the Federal Government the power to construct works of internal improvement within the States, or to appropriate money from the Treasury for that purpose. That this bill assumes for the Federal Government the right to exercise this power can not, I think, be doubted. The approved course of the Government and the deliberately expressed judgment of the people

have denied the existence of such a power under the Constitution. Several of my predecessors have denied its existence in the most solemn forms.

The general proposition that the Federal Government does not possess this power is so well settled and has for a considerable period been so generally acquiesced in that it is not deemed necessary to reiterate the arguments by which it is sustained. Nor do I deem it necessary, after the full and elaborate discussions which have taken place before the country on this subject, to do more than to state the general considerations which have satisfied me of the unconstitutionality and inexpediency of the exercise of such a power.

The Federal Government was “one of limited powers” expressly granted by the Constitution “or are properly incident to the expressly granted powers and necessary to their execution.” The first question to consider, according to James Madison, was whether the power was expressed directly in the Constitution. If not, the second question was whether it is incident to that power and necessary to its execution. If not, Congress cannot adopt laws exercising that power. President Polk supported appropriations for lighthouses, beacons, and other devices for improving the bays, inlets, and harbors “on our ocean and lake coasts immediately connected with our foreign commerce.” When Congress seeks improvements in the interior, unconnected with foreign trade and not needed for the Navy and commercial marine activities, “the difficulty arises in drawing a line beyond which appropriations may not be made by the Federal Government”:

One of my predecessors, who saw the evil consequences of the system proposed to be revived by this bill, attempted to define this line by declaring that “expenditures of this character” should be “confined below the ports of entry or delivery established by law.”

Acting on this restriction, he withheld his sanction from a bill which had passed Congress “to improve the navigation of the Wabash River.” He was at the same time “sensible that this restriction was not as satisfactory as could be desired, and that much embarrassment may be caused to the executive department in its execution, by appropriations for remote and not well-understood objects.

The predecessor in question was, of course, President Jackson, but President Polk found that the distinction made in his predecessor’s Wabash River veto “was subject to be evaded and rendered comparatively useless in checking the system of improvements which it was designed to arrest.” In trying to make that distinction, he said:

To sanction the bill with such provisions would be to concede the *principle* that the Federal Government possesses the power to expend the public money in a general system of internal improvements, limited in its extent only by the ever-varying discretion of successive Congresses and successive Executives. It would be to efface and remove the limitations and restrictions of power which the Constitution has wisely provided to limit the authority and action of the Federal Government to a few well-defined and specified objects. Besides these objections, the practical evils which must flow from the exercise on the part of the Federal Government of the powers asserted in this bill impress my mind with a

grave sense of my duty to avert them from the country as far as my constitutional action may enable me to do so.

It not only leads to a consolidation of power in the Federal Government at the expense of rightful authority of the States, but its inevitable tendency is to embrace objects for the expenditure of the public money which are local in their character, benefiting but few at the expense of the common Treasury of the whole. It will engender sectional feelings and prejudices calculated to disturb the harmony of the Union. It will destroy the harmony which should prevail in our legislative councils.

Aside from the constitutional objections, President Polk made clear he had other objections “of a serious nature.” The bill appropriated between \$1 million and \$2 million for projects that were “of no pressing necessity, and this is proposed at a time when the country is engaged in a foreign war,” namely the war with Mexico. Under such circumstances, he did not want to “waste” financial resources “on comparatively unimportant objects.” He also wanted to “avoid the accumulation of a large public debt, the existence of which would be opposed to the interests of our people as well as to the genius of our free institutions.”

Further, if he approved the bill, it would “inevitably lead to large and annually increasing appropriations and drains upon the Treasury, for it is not to be doubted that numerous other localities not embraced in its provisions, but quite as much entitled to the favor of the Government as those which are embraced, will demand, through their representatives in Congress, to be placed on an equal footing with them.”

The bill’s supporters tried to overturn the veto, but were unsuccessful.

In an 1892 history of river and harbor acts, Professor Emory R. Johnson wrote:

President Polk’s war on the river and harbor bill was more bitter than President Tyler’s had been He favored and advocated at length a return to the policy pursued previous to 1822. This ended river and harbor legislation till 1854, when a bill passed by Congress received the veto of President [Franklin] Pierce. [Johnson, Emory R., “River and Harbor Bills,” *The Annals of the American Academy of Political and Social Sciences*, Vol. 2 (May 1892)]

On internal improvements, President Polk was aligned with President Jackson’s views, namely opposed. Professor Larson explained:

According to his own lights Polk never had embraced the thinly veiled excuses by which good Democrats delivered pork while clinging to the strict Jacksonian creed. Increasingly buffeted by factional tensions, East-West jealousies, and the rise of a northern antislavery or “free soil” wing, the Democratic Party had both nominated Polk and tried to clarify its principles at the 1844 Baltimore Convention. Out of a timeless opposition to Henry Clay and his American System had emerged at that convention a blanket condemnation of the power “to commence or carry on a general system of internal improvements,” a rule potentially more exacting than Jackson’s or Calhoun’s.

Nevertheless, members of Polk's party, as well as the Whigs, believed in the value of internal improvements, whether to help development of the western States, to pull the diverse country together, or as Borneman had noted, for political advantage in upcoming elections.

During his 4 years in office, President Polk vetoed only three bills, two of which involved internal improvements.

On March 3, 1847, the final day of the 29th Congress, H.R. 84 was passed appropriating funds to continue works in the territory of Wisconsin and over half a million dollars for harbor and river projects in several States. President Polk pocket vetoed the bill.

When Congress returned later that year, President Polk sent a veto message to Congress on December 15, 1847, explaining his pocket veto of "An act to provide for continuing certain works in the Territory of Wisconsin, and for other purposes." He began by summarizing the bill:

Although from the title of the bill it would seem that its main object was to make provision for continuing certain works already commenced in the Territory of Wisconsin, it appears on examination of its provisions that it contains only a single appropriation of \$6,000 to be applied within that Territory, while it appropriates more than half a million of dollars for the improvement of numerous harbors and rivers lying within the limits and jurisdiction of several of the States of the Union.

At the preceding session of Congress it became my duty to return with my objections to the House in which it originated a bill making similar appropriations and involving like principles, and the views then expressed remain unchanged.

In pocket vetoing the new bill, the former chairman of the Committee of Ways and Means pointed out:

The policy of embarking the Federal Government in a general system of internal improvements had its origin but little more than twenty years ago. In a very few years the applications to Congress for appropriations in furtherance of such objects exceeded \$200,000,000. In this alarming crisis President Jackson refused to approve and sign the Maysville road bill, the Wabash River bill, and other bills of similar character. His interposition put a check upon the new policy of throwing the cost of local improvements upon the National Treasury, preserved the revenues of the nation for their legitimate objects, by which he was enabled to extinguish the then existing public debt and to present to an admiring world the unprecedented spectacle in modern times of a nation free from debt and advancing to greatness with unequalled strides under a Government which was content to act within its appropriate sphere in protecting the States and individuals in their own chosen career of improvement and of enterprise.

The present bill did not appropriate funds for a road or canal, but he could see that if it became law, "it is not easy to perceive the difference in principle or mischievous tendency between appropriations for making roads and digging canals and appropriations

to deepen rivers and improve harbors.” The history of congressional involvement in internal improvements was “full of eloquent warnings.” Several States embarked on systems of roads and canals, not by taxing residents, but through debt to “ruinous” effect, particularly during economic panics:

If the abuse of power has been so fatal in the States, where the systems of taxation are direct and the representatives responsible at short periods to small masses of constituents, how much greater danger of abuse is to be apprehended in the General Government, whose revenues are raised by indirect taxation and whose functionaries are responsible to the people in larger masses and for longer terms.

By the time President Jackson put a check on the practice, “it had begun to be considered the highest merit in a member of Congress to be able to procure appropriations of public money to be expended within his district or State, whatever might be the object.” He added:

We should be blind to the experience of the past if we did not see abundant evidences that if this system of expenditure is to be indulged in[,] combinations of individual and local interests will be found strong enough to control legislation, absorb the revenues of the country, and plunge the Government into a hopeless indebtedness.

One example of the abuse was how Congress stretched terms such as “harbors” and “rivers” to secure funds for bodies of water that in no other context than a Federal appropriations act would be so called. This illustrated how appropriations for internal improvements could be “perverted to the accomplishment of the worst of political purposes.” He continued:

During the few years it was in full operation, and which immediately preceded the veto of President Jackson of the Maysville road bill, instances were numerous of public men seeking to gain popular favor by holding out to the people interested in particular localities the promise of large disbursements of public money. Numerous reconnoissances and surveys were made during that period for roads and canals through many parts of the Union, and the people in the vicinity of each were led to believe that their property would be enhanced in value and they themselves enriched by the large expenditures which they were promised by the advocates of the system Whole sections of the country were thus sought to be influenced, and the system was fast becoming one not only of profuse and wasteful expenditure, but a potent political engine.

Inevitably, Congress would be called on “under the cloak of public good” for all sorts of improvements. “To enrich neighborhoods by spending within them the moneys of the nation will be the aim and boast of those who prize their local interests above the good of the nation” No such system could be administered “with any approach to equality among the several States and sections of the Union.”

Further, “a greater practical evil” would arise in how the projects were chosen:

The most artful and industrious would be the most successful. The true interests of the country would be lost sight of in an annual scramble for the contents of the Treasury, and the Member of Congress who could procure the largest appropriations to be expended in his district would claim the reward of victory from his enriched constituents. The necessary consequence would be sectional discontents and heartburnings, increased taxation, and a national debt never to be extinguished.

Considering “these portentous consequences,” he thought “this course of legislation should be arrested, even were there nothing to forbid it in the fundamental laws of our Union.”

If practical considerations did not argue against approval, he would have vetoed the bill because the Constitution indicates a process for improving rivers and harbors within the States, “a process not susceptible to the abuses necessarily to flow from the assumption of the power to improve them by the General Government.” He was referring to the provision of the Constitution providing that “no State shall, without the consent of Congress, lay any duty of tonnage.” President Polk wrote, “Here is a safe provision for the improvement of harbors and rivers in the reserved powers of the States and in the aid they may derive from duties of tonnage levied with the consent of Congress.” He cited the many examples of congressional consent, the first being for Rhode Island in 1790 and the most recent in 1843 for Maryland. “That the power was constitutionally and rightfully exercised in these cases does not admit of a doubt.”

Previous Presidents had sometimes approved appropriations for internal improvements that they did not believe were permitted under the Constitution, but President Polk believed the government should return “to the early and approved construction of the Constitution.”

He recalled that he had been in the House when the Maysville bill was considered:

When the bill authorizing a subscription on the part of the United States for stock in the Maysville and Lexington Turnpike Company passed the two Houses, there had been reported by the Committees of Internal Improvements bills containing appropriations for such objects, inclusive of those for the Cumberland road and for harbors and light-houses, to the amount of \$106,000,000. In this amount was included authority to the Secretary of the Treasury to subscribe for the stock of different companies to a great extent, and the residue was principally for the direct construction of roads by this Government. In addition to these projects, which had been presented to the two Houses under the sanction and recommendation of their respective Committees on Internal Improvements, there were then still pending before the committees and in memorials to Congress presented but not referred[,] different projects for works of a similar character, the expense of which can not be estimated with certainty, but must have exceeded \$100,000,000

President Jackson’s powerful and disinterested appeals to his country appear to have put down forever the assumption of power to make roads and cut canals, and to have checked the prevalent disposition to bring all rivers in any degree navigable within the control of the General Government. But an immense field

for expending the public money and increasing the power and patronage of this Government was left open in the concession of even a limited power of Congress to improve harbors and rivers

He pointed out that Madison's report on the debates during the Constitutional Convention, published in 1840, did not contain any evidence that the founders intended to grant the General Government the power to build and maintain internal improvements within the States. The founders saw themselves as protecting the rights of their States and did not wish to concede any right of jurisdiction to the General Government over their soil:

A proposition was made in the Convention to provide for the appointment of a "Secretary of Domestic Affairs," and make it his duty, among other things, "to attend to the opening of roads and navigation and the facilitating [of] communications through the United States." It was referred to a committee, and that appears to have been the last of it. On a subsequent occasion a proposition was made to confer on Congress the power to "provide for the cutting of canals when deemed necessary," which was rejected by the strong majority of eight States to three. Among the reasons given for the rejection of this proposition, it was urged that "the expense in such cases will fall on the United States and the benefits accrue to the places where the canals may be cut."

During the consideration of this proposition a motion was made to enlarge the proposed power for "cutting canals" into a power "to grant charters of incorporation when the interest of the United States might require and the legislative provisions of the individual States may be incompetent;" and the reason assigned by Mr. Madison for the proposed enlargement of the power was that it would "secure an easy communication between the States, which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones, as far as possible, ought to follow."

The original proposition and all the amendments were rejected, after deliberate discussion, not on the ground, as so much of that discussion as has been preserved indicates, that no direct grant was necessary, but because it was deemed inexpedient to grant it at all. When it is considered that some of the members of the Convention, who afterwards participated in the organization and administration of the Government, advocated and practiced upon a very liberal construction of the Constitution, grasping at many high powers as implied in its various provisions, not one of them, it is believed, at that day claimed the power to make roads and canals, or improve rivers and harbors, or appropriate money for that purpose. Among our early statesmen of the strict-construction class the opinion was universal, when the subject was first broached, that Congress did not possess the power, although some of them thought it desirable.

President Jackson had acknowledged the precedents established by earlier Presidents and Congresses, but his veto of the Maysville bill and other internal improvement measures had "reversed the precedents which existed prior to that time on the subject of internal improvements."

President Polk also rejected the views of those who thought internal improvement appropriations could be justified because the Constitution granted Congress the “power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.” The authority to “regulate,” he said, “presupposes the existence of commerce, and, of course, the means by which and the channels through which commerce is carried on.” He added that the term did not confer “creative power”:

If the definition of the word “regulate” is to include the provision of means to carry on commerce, then have Congress not only power to deepen harbors, clear out rivers, dig canals, and make roads, but also to build ships, railroad cars, and other vehicles, all of which are necessary to commerce. There is no middle ground.

In President Washington’s first administration under the Constitution, the provision was applied “by prescribing general rules by which commerce should be conducted,” for example by treaties with other countries and among the States by laws involving “the coasting trade and the vessels employed therein, and for the better security of passengers in vessels propelled by steam, and by the removal of all restrictions upon internal trade.” From the earliest years to the present, President Polk explained, that is how the constitutional grant of power had been administered.

If a power to appropriate funds for internal improvements was desirable, a constitutional amendment was the appropriate means for conveying that power to the Congress. “This course has been recommended successively by Presidents Jefferson, Madison, Monroe, and Jackson, and I fully concur with them in opinion.”

At the time, Abraham Lincoln of Illinois was a Whig Party member of the House of Representatives serving on the Committee on Post Offices and Post Roads (1847-1849). As a Whig, he supported internal improvements, which put him at odds with President Polk. On June 20, 1848, Representative Lincoln took to the floor of the House to deliver an address on internal improvements in response to President Polk’s explanation on December 15, 1847, of his veto of the Wisconsin bill of December 15, 1847. The story of Lincoln versus Polk is told on this Web site at <https://www.fhwa.dot.gov/highwayhistory/lincolnvpolk.pdf>.

President Polk’s third veto occurred on August 8, 1846. He vetoed S. 68, a bill to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to July 31, 1801. The veto was sustained.

The Incomplete Veto

Like President Monroe, President Polk anticipated that he would have another opportunity to address congressional abuses of internal improvements legislation. The issue was sufficiently important to him that he began working on a veto message in 1848 that he would have in place when the next internal improvements bill arrived. That opportunity never arrived, leaving a partial draft in his handwriting. He appended this note for the record:

These sheets were prepared in July 1848, in the expectation that Congress would pass some one of the numerous internal improvement bills which were before them, and which if passed I could not approve and sign. I intended to veto any such Bill, and with a view to be prepared these sheets were written. Other views were to be added. Congress however adjourned without passing such a bill, and this paper was therefore not used.

In the draft, he pointed out that the Constitution was “silent on the subject. It is not pretended that there is any express grant of this power in its provisions.” As a result, he “came to the conclusion that the assumption of such a power by the general Government was of modern invention[,] a dangerous and unwarrantable interpolation upon the Constitution.”

For proof, he looked to the first Congress, meeting in the temporary capital of New York City in 1789. The Congress included many members who had participated in the Constitutional Convention “and must be presumed to have understood its true intent and meaning.” He added, “These proceedings afford evidence, both positive and negative, that not a member of that body conceived that they possessed any such power.”

To back this assertion, he discussed the debate on selecting a permanent seat of the country’s capital, with the leading candidates being a location along the Susquehanna River in Pennsylvania and one along the Potomac River. The House initially favored a location along the Susquehanna River, but an amendment was moved that the law designating the site would not take effect “until the States of Pennsylvania and Maryland shall pass acts providing for the removing of the obstructions” from the river below the site:

A discussion ensued which shows as clearly as language can show that Congress did not then consider themselves authorized to improve a river, even for the important purpose of opening the navigation between the seat of Government and the ocean

The amendment became part of the bill, which passed the House on September 22, 1789, 31 to 17, but was postponed in the Senate and not approved as the Potomac River location was selected:

The consideration and discussion of this bill proves conclusively that no member of Congress, being the first that ever met under the Constitution, intimated or expressed an opinion that under the grant of power “to regulate commerce,” or any other grant, Congress had the power to provide for the removal of the obstructions in the Susquehanna by its own legislation. On the contrary, every member either expressly or silently conceded that the power rested entirely and exclusively with the States, and that the highest interests of the United States would be at their mercy, unless removed by an express stipulation, such as was incorporated in the bill as it passed the House of Representatives.

The idea now so extensively entertained that in “regulating commerce among the States” Congress might assume the power and seize upon and exercise

jurisdiction over the harbours and rivers of the States had not then occurred to the most latitudinarian constructionist.

He summarized his argument on this point by saying:

It is not to be conceived, if the First Congress entertained the opinion that the General Government possessed the power to remove obstructions in rivers, that this provision requiring the States within those limits [of] the Susquehanna run to do it, would have been proposed and inserted in this bill

The first Congress did pass “An act for the establishment and support of Light Houses, Beacons, Buoys and Public Piers,” which President Washington signed on August 7, 1789, but it provided that before work could commence, the States must cede the land to the general government. This restriction “proves that Congress did not then feel at liberty to exercise these powers over any territory but its own, over places where not only the right of soil but the jurisdiction over it had been ceded to the United States.”

All subsequent bills covering activities of these types through the early 1820s contained a similar restriction. By the mid-1820s, Congress passed similar legislation for actions “without possessing a title to the lands, and without obtaining from the States a cession of jurisdiction over them.” The first such legislation without that distinction had been “An act for improving certain harbors and the navigation of certain rivers and creeks, and for authorizing surveys to be made of certain bays, sounds, and rivers therein mentioned.” President Adams signed the bill on May 20, 1826:

But from whatever grant of power in the Constitution the First Congress deduced the right to construct “light-houses, beacons, buoys and public piers” on their own soil, they would doubtless have been much surprised had they been told that the power thus exercised was identical with the power to improve harbours, remove obstructions from rivers, dig canals and make roads upon the soil of the States, without the grant of either the title to the land on which these improvements were made, or the cession of jurisdiction over it.

He added, “this interpretation has since that time been attempted to be confirmed by a latitudinous and unwarranted construction of the language employed in the grants of power to the Federal Government contained in the Constitution”

The paper then went through some of the justifications for internal improvements such as the annual appropriations for improvements of rivers and harbors. He began with the clause granting Congress the power to “regulate commerce with foreign nations, among the several States, and with the Indian tribes.” He mentioned that his veto message of December 15, 1847, had shown “the true meaning of the terms employed in that grant”:

I showed from the import of the terms themselves as well as from the authority of our most distinguished statesmen that upon no fair construction could they convey by implication the enormous, corrupting and dangerous power now claimed.

If the phrase did convey an incidental or implied power of “excavating the channels of rivers or harbours, digging canals or making roads within the jurisdiction of the States,” it necessarily implied:

. . . that this Government has not only the . . . right to appropriate money but to employ workmen to execute the proposed improvement, and as an incident to that again to protect their workmen by their own laws from the interference of State jurisdiction over them; and, if a criminal offense be committed by them or by citizens of the State against them, to try and punish the offender in the federal courts, to the exclusion of the jurisdiction and rightful authority of the States over them.

He observed what “a mighty power” the Constitution had conveyed from “the plain and simple words to ‘regulate commerce.’” And from that incidental power, another was derived “until incident is piled on incident, engulfing in the general Government powers which were reserved to the States and totally sweeping down and destroying all State power and jurisdiction over all such rivers, harbours and other places where the U.S. choose to direct improvements to be made . . .”:

To say that the power to “regulate commerce among the States” conveys the power to enter upon their rivers and harbours, and break up their soil, by roads and canals, is as inaccurate as to say that the power to “regulate commerce with foreign nations” conveys to our Congress the power to improve the Thames, or deepen the harbour of Liverpool, or make roads and canals in Germany.

After all, the power to regulate commerce with foreign nations was in the same clause of the Constitution as the phrase about regulating commerce among the States, and should be interpreted in the same way. “This latitude of construction would bring within the scope of the power of our Congress the improvement of all the harbours and rivers on the Globe.” As he put it, “What a mighty power is thus attempted to be fixed upon the Constitution by this system of constructive or implied powers!”

Next, President Polk explored the justification for river and harbor improvements based on Section 10 of Article II: “No state shall, without the consent of the Congress, lay any imposts on imports or exports, except what may be absolutely necessary for executing its inspection laws . . .” As he pointed out, he had discussed this provision in his veto message of December 15, 1847. The original 13 States had exercised this power, with congressional consent, repeatedly:

While for more than thirty years after the adoption of the Constitution Congresses were “regulating commerce,” by a species of legislation altogether different, the States were opening and improving the channels of commerce within their limits by their own means, and among these by the tonnage duties which many of them levied with the consent of Congress

However, enabling acts for new States required those States to surrender this right, contrary to the intent of the Constitution:

But the objection to the levying of tonnage duties by the new States proceeds upon the broad assumption of the absolute and total immunity of the Western Territory by compact from any tax, impost or duty under any authority, national, state or both combined.

If the objection be a sound one, . . . then those States themselves are prohibited from improving their own rivers and “the carrying places between the same” and of charging any toll or tax for the use of such improvements, because these rivers and portages or “carrying places” between them are declared by these compacts to be “common highways and forever free,” and not subject to any “tax, impost, or duty” for their use

Nevertheless, the States had improved rivers, then imposed a toll or tax for the use of these improvements, as was their right. “This is the settled construction and the practice under it by these States”:

If the Legislatures of these States can “with the funds of the States” make these improvements, and impose a “tax impost or duty” for their use, there can be nothing to restrain or prevent them from “laying a tonnage duty,” with the consent of Congress, on vessels which use them, to aid the State in defraying the cost of making the improvements They may not wish to exercise their undoubted right to lay a tax by means of tonnage duties, but they cannot be deprived of that right, if they choose to exercise it, and Congress shall give its consent, as provided by the Constitution

Next, President Polk considered whether the clause to “provide for the . . . general welfare” could support harbor and river internal improvements:

Arguments in favour of enlarging the powers of the Federal Government which are derived not from the constitution itself but from considerations of convenience and expediency are not only of alarming and dangerous tendency, but if they shall prevail, must soon convert the Government into one of absolute and unlimited powers.

Invoking “general welfare” would “sweep down, abrogate and render nugatory all the limitations of power by which the federal Government is fenced in and restricted by the Constitution itself”:

The Government formed by the Constitution is one of definite, enumerated and specified powers If it be established that the power over internal improvements has not been granted by the Constitution, all arguments to prove its utility are vain, and the only remedy for any defect of power which may exist is an amendment of the Constitution

This is the remedy which has been recommended by several of the ablest and wisest of my predecessors, who have denied the power of the General Government to exercise the power of making internal improvements. It may be useful to refer to their opinions and recommendations on the subject, more particularly than was done in a former message

This is where President Polk’s unused hand-written veto message ended. David P. Currie and Emily E. Kadens, in their article reprinting the message, suggested:

Both Jefferson and Madison, Polk was about to remind us, had urged that the Constitution be amended to authorize Congress to make internal improvements,

but without success; Congress had no greater power in the premises in 1848 than it had possessed in 1789. [Currie, David P., and Kadens, Emily E., "President Polk on Internal Improvements: The Undelivered Veto," *From the Bag*, Autumn 2004]

Before the election, Polk stated that he would serve only one term, which he thought would be enough to achieve his domestic and foreign goals. As it happened, he was largely correct.

President Polk, having embraced Manifest Destiny, is perhaps best remembered for completing expansion of the country to its continental limits. His actions included finalizing plans for the Republic of Texas to join the Union, securing victory in the Mexican-American War in 1848 to incorporate the Southwest and California, and resolving the "Fifty-Four or Fifty or Fight" dispute with Great Britain over the northern boundary of the Oregon Territory (Oregon and Washington). Historians generally consider Polk the "strongest man in the White House between Jackson and Lincoln," as Herbert Agar put it in his classic survey, *The Price of Union* [Sentry Edition, Houghton Mifflin Company, 1966]:

He consolidated the Jacksonian changes in the presidency and made certain that they would endure. There have been many weak Presidents since his day, who dared not use the formidable power that had been handed them; but for all who wished to use it, the Power was there.

After attending the inauguration of his successor, former President Polk and his wife Sarah left Washington by boat for a tour of the South, instead of the more direct northern route to their home in Columbia, Tennessee. They would travel mainly by steamship and railroad, with only one stretch in a stagecoach, reaching Nashville on April 2, 1849. It had been a triumphal trip, with celebrations and honors at every stop along the way.

He had left office physically weakened and exhausted. The trip through the South had weakened him further. Just as he seemed to be returning to health, however, former President Polk died 3 months after leaving office, at the age of 53, on June 15, 1849. Borneman wrote:

His ex-presidency of 103 days remains the shortest in history. In the end, cholera was the likely cause of death, but the stress and strain of the presidency had lowered his resistance to any foe.

President Zachary Taylor

In 1848, President Polk's Democratic Party nominated Lewis Cass, the former Governor, Senator, and Secretary of War, for President. He had been born in New Hampshire in 1782, moved with his family to Marietta, Ohio, in 1800. He opened a law practice in Zanesville and served in the Ohio House of Representatives before President Jefferson appointed him U.S. Marshall for Ohio. During the War of 1812, he attained the rank of Brigadier General. In 1813, President Madison appointed General Cass to be Governor

of the Michigan Territory, a post he held until 1831, when President Jackson appointed him Secretary of War. He supported slavery, and owned at least one, and was a strong advocate of Indian removal from the land east of the Mississippi River.

Former Representative William O. Butler of Kentucky (1839-1843) was the nominee for Vice President. General Butler, a hero of the War of 1812, had fought in the Mexican war as well. The party platform retained the three principles from past elections about limited government, including: "That the Constitution does not confer upon the General Government the power to commence and carry on a general system of internal improvements."

Former President Van Buren sought the nomination, but when he didn't secure it, became the nominee of the Free Soil Party, formed that year to oppose expansion of slavery into the new territories.

The Whig Party nominated General Zachary Taylor, the hero of the war with Mexico (nicknamed "Old Rough and Ready"). Born in Virginia, Taylor had been raised in Kentucky. Following a reassignment, he was living at Cypress Grove, his plantation in Baton Rouge, Louisiana, at the time of the election. He owned 150 slaves on his plantations in Kentucky, Mississippi and Louisiana. He had never expressed interest in politics or discussed any views he may have had. However, Whig Party leaders thought his military fame would appeal to voters in the same way as General Jackson's fame propelled him to the presidency.

The party balanced the ticket with New York's Millard Fillmore, a former member of the U.S. House of Representatives from Buffalo (1839-1843) who had taken office as Comptroller of the State in January 1848. He had served as chairman of the Committee of Ways and Means during his final term (1841-1843), occasionally participating in debates on the Cumberland Road, as discussed earlier.

The Whig Party platform addressed the concern that General Taylor did not share the party's ideals or had any ideas of his own on the issues:

That General Taylor, in saying that, had he voted in 1844, he would have voted the Whig ticket, gives us the assurance – and no better is needed from a consistent and truth-speaking man – that his heart was with us at the crisis of our political destiny, when Henry Clay was our candidate and when not only Whig principles were well defined and clearly asserted, but Whig measures depended on success. The heart that was with us then is with us now, and we have a soldier's word of honor, and a life of public and private virtue, as the security.

The rest of the platform endorsed the military and extolled General Taylor's successful military career.

In the election, General Taylor received 1,361,393 votes and 163 electoral college votes, with 146 needed to win. Cass received 1,223,460 votes (127 electoral college votes). Former President Van Buren secured 291,501 vote (no electoral votes).

Professor Holman Hamilton, in his biography of General Taylor, described the President-elect's trip from Baton Rouge to Washington. One of his last official military acts was to resign his command on January 23, 1849. He had retained the commission, and the salary that came with it, until nearly the last minute.

When his neighbors and friends arrived to wish him well, he told them:

It is with feelings of no ordinary character that I meet with my fellow-citizens on this occasion, many of whom I have been associated with . . . more than a quarter of a century I should have much preferred to retain the office I am now about to vacate, and have remained among you; but the people have, without my solicitation, seen fit to elevate me to another, and although I fear I am not qualified to discharge the . . . duties imposed upon me, yet . . . I shall endeavor to fulfil them Permit me . . . to invoke God's blessing upon you all! May he grant that you and your families may enjoy long life and prosperity – Farewell.

After a week at his plantation, President-elect Taylor left on February 16 on the *Sea Gull*, north on the Mississippi River. He stopped at Vicksburg, Mississippi; Memphis and Nashville, Tennessee; and Louisville, Kentucky. “Large and enthusiastic crowds greeted the President-elect and entertained him royally, the loudest cheering and most lavish banquet awaiting him at Louisville.”

The steamship trip was not without incidents. The ship experienced a rudder accident near Memphis, temporarily halting progress. Leaving Madison, Indiana, President-elect Taylor sustained an injury when a trunk in the gangway rolled over on him, bruising his left arm and side.

Continuing north on the Kentucky River, the Taylor party arrived in the Kentucky capital of Frankfort, where he met with former Senator Crittenden, who had become Governor on September 6, 1848. They discussed the makeup of the incoming Cabinet. The Taylor party left Frankfort on the *Blue Ridge*, transferring at Carrollton to the *Ben Franklin* and *Telegraph No. 2* (the two ships lashed together), which would take him to Cincinnati, where he would connect with the Ohio River.

Upon his arrival in Cincinnati, he was pushed by crowds against the guard of the boat, adding his right hand to his list of injuries, which now included a cold:

Despite the Queen City's high winds and low temperature men, women and children packed the levee and the streets to an extent “witnessed on no former occasion.” As the parade moved up Broadway, “house-tops, windows, balconies . . . were thronged with ladies, waving scarfs to the man of the people.” At Masonic Hall, “the crowd being so great, the Mayor's speech was interrupted, and, owing to an accident which Gen. Taylor met with on the boat, the formality of a reply was dispensed with. After exchanging . . . congratulations with the ladies, the General retired to the Pearl Street House, where rooms had been prepared for him.”

Aboard the Telegraph, the Taylor party continued past Pomeroy, Ohio, and Parkersburg, Virginia:

The river was full of floating ice, and five miles above Marietta the steamboat ran aground. After an hour's detention the boat was freed, but it later yielded to gorged ice and low water at Captina Island, seven miles below Moundsville. A messenger procured sleighs and coaches, the passengers abandoned the vessel, and went to Moundsville and on to Wheeling on February 20.

At Wheeling a "grand and imposing" parade led Taylor to the United States Hotel. Ladies waved from every window. "Snowy white banners and hearty cheers given by 10,000 citizens . . . formed a picture which we acknowledge our inability to portray." A formal address of welcome was delivered on the steps of the hotel. After the General responded, a "pure . . . democratic shout . . . went up." Taylor, escorted to his chamber, at a later hour was "introduced . . . to . . . his fellow citizens."

The frozen river blocked President-elect Taylor's plan to visit Pittsburgh. Instead, his party left Wheeling on February 21 for Cumberland, guided by Thomas Shriver, "one of Cumberland's most indefatigable Whigs," who operated a stage line along the road:

At the Old Globe Inn in Washington, Pennsylvania, a reception was held and luncheon served. Taylor spent Wednesday night in Uniontown and Thursday night in Cumberland, where he planned to take a train Friday.

The ride on the Cumberland Road had been a source of wonder for the President-elect:

"The road was a perfect glare of ice, and everything . . . plated with sleeted frost. The scenery was beautiful; to . . . mountaineers too common to be of much interest, but to a Southerner like General Taylor . . . it was a phenomenon." Descending a spur of Meadow Mountain . . . the presidential coach danced on the polished road with every sign of capsizing. "Shriver was in the rear, and in the greatest trepidation" for Taylor's safety. "Down each hill and mountain his bare head could be seen protruding through the window of his coach to discover if the President's coach was still upon wheels. The iron gray head of the General" frequently appeared outside his window, "not to see after anybody's safety, but to look upon what seemed to him an arctic panorama. At length the last long slope was passed. "At twilight the narrows were reached, two miles west of Cumberland, one of the boldest and most sublime views on the Atlantic slope. General Taylor . . . ordered a halt Out he got in the storm and snow and looked . . . until he had taken in the grandeur The President-elect was tendered a reception . . . at Cumberland, and the next morning he and his party left on the cars for Washington."

As he entrained at Cumberland, a party of miners came along to see him:

In a few remarks . . . he said they were the men who developed the wealth of the country, and added that good roads and good laws were all that we wanted, for the American people knew how to take care of themselves.” Taylor displayed a lively interest in the country through which the railway led him. Ellicott’s Mills made a particular impression, and he ventured the prediction that the place might become “the Lowell of Maryland.”

He was referring to Lowell, Massachusetts, a leading city in the country’s industrial revolution.

At the Relay House, committees from Washington and Baltimore were among the 3,000 people greeting the President-elect:

Taylor was his usual modest self. “He . . . said that the battles attributed to his valor were won by the bravery of the soldiers He intended to do all in his power to benefit the American People; but if he should commit errors, as he necessarily must, he would depend upon the magnanimity of those who had placed him in office.”

When the train arrived in Washington, President-elect Taylor was greeted loudly:

Bonfires blazed. Cannon boomed. The flight of rockets in the night added man-made brilliance to the star-swept sky. The *National Intelligencer* reported that spectators, blocking the route from the station to Willard’s Hotel, were more numerous than any previously witnessed. When Taylor stepped out on the balcony and returned thanks for the enthusiasm, he was welcomed by “deafening huzzas.”

. . . When Taylor reached Willard’s that Friday night he was obviously weary. His wrinkled face was patched with pallor. His injured arm hung limp at his side. With characteristic common sense, he refused to see callers on Saturday and Sunday, devoting the week end to recuperation.

On Monday, the 64-year old President-elect visited President Polk at the White House, the first time the two had met.

President-elect Taylor’s wife Margaret "Peggy" Mackall Taylor had not accompanied him on the arduous trip. She traveled to Washington separately. In Washington, however, she shunned the traditional role of the First Lady, deferring to their young and lively daughter, Elizabeth “Betty” Taylor Bliss, for the President’s social events, including the inaugural balls. [Hamilton, Holman, *Zachary Taylor: Soldier in the White House*, Bobbs-Merrill, 1951; Eisenhower, John S. D., *Zachary Taylor*, The American Presidents Series, Times Books, 2008]

President-elect Taylor chose not to be inaugurated on March 4, a Sunday. Instead, he was inaugurated on Monday, March 5. Borneman described the scene:

[On] a cold and blustery Washington morning, March 5, 1849, with a stiff wind blowing in from the Potomac, Zachary Taylor left Willard's Hotel. In an open carriage drawn by four matched grays, he drove to collect James K. Polk from his rooms at the Irving Hotel, and they rode together down Pennsylvania Avenue to the Capitol.

During the ride, President-elect Taylor expressed doubt that the western territories, California and Oregon, would become States. They "were too distant to become members of the Union." Although these statements raised President Polk's alarm, President Taylor did not act on these views.

The new President read his Inaugural Address in what Polk described in his diary as "a very low voice and very badly as to his pronunciation and manner." In the speech, he promised to be guided by the Constitution as interpreted by judicial opinions "and to the practice of the Government under the earlier Presidents, who had so large a share in its formation." He further promised to fulfill the policies of the Whig Party, without mentioning the party, including:

It shall be my study to recommend such constitutional measures to Congress as may be necessary and proper to secure encouragement and protection to the great interests of agriculture, commerce, and manufactures, to improve our rivers and harbors, to provide for the speedy extinguishment of the public debt, to enforce a strict accountability on the part of all officers of the Government and the utmost economy in all public expenditures; but it is for the wisdom of Congress itself, in which all legislative powers are vested by the Constitution, to regulate these and other matters of domestic policy. I shall look with confidence to the enlightened patriotism of that body to adopt such measures of conciliation as may harmonize conflicting interests and tend to perpetuate that Union which should be the paramount object of our hopes and affections. In any action calculated to promote an object so near the heart of everyone who truly loves his country I will zealously unite with the coordinate branches of the Government.

Representative Abraham Lincoln had worked tirelessly for the nomination and election of General Taylor. After serving one term in the House, he chose not to run for reelection in accordance with the Illinois tradition of stepping aside for the colleague whose "turn" it was for the next term in Washington. While still in Washington, he hoped his efforts to support General Taylor's election would earn a patronage post as Commissioner of the General Land Office or a post in Illinois, but that was not to be. He returned to Springfield, Illinois, to resume his practice of law.

Reasons for the Decline in Internal Improvements

Professor Hill summarized the period after President Jackson regarding internal improvements. Congress often designated surveys and appropriated funds for improvements that had not been studied by the engineers, "and it passed numerous river and harbor bills with numerous items." With States and cities clamoring for projects, the "inevitable tendency was to grant funds for many small, local projects." This process

resulted in the frequent invocation of the epithet “logrolling” as members secured inclusion of their district projects in exchange for supporting the district projects of others:

Since there was never a consensus in Congress after 1838 regarding the constitutionality or expediency of these improvements, such unsatisfactory results were inevitable. Despite widespread agreement that the government should make improvements of a clearly national character, Congress could never agree on the scope of the river and harbor category, the distinction between national and local works, and the exact constitutional basis of its power to appropriate for these improvements.

Questions of the expediency and legality of river and harbor improvements became involved in such issues as the protective tariff and disposal of the revenue surplus, which increasingly assumed a sectional character. The Whigs commonly supported and the Democrats opposed large river and harbor bills

Attitudes of the Executives were also of strategic importance in the river and harbor activities of the army engineers. After 1838 there was a major change in national policy toward river and harbor improvements. All Presidents after Jackson except Taylor and Fillmore, who were Whigs, followed such a strict interpretation of the Constitution that Jacksonian policies were later regarded as liberal by comparison. There was increased hostility toward these policies from term to term with Van Buren, Tyler, Polk, Pierce, and Buchanan. These five presidents either submitted estimates for only a few strictly national improvements or presented none at all. They urged execution of minor works by state or local government and vetoed several river and harbor bills on the premise that they authorized local works which were unrelated to delegated federal powers and thus unconstitutional.

Professor Johnson, in his 1892 article about river and harbor legislation, also discussed the reasons for the decline:

In 1822 . . . internal improvements by the general government meant appropriations for turnpikes, canals, rivers and harbors. Clay now linked internal improvements and the tariff together and named the union “The American System.” The internal improvement part of the American System went by the board during the decade, 1830-1840. The causes of this were mostly economic, though partly the political one of Democratic strict constructionism

The real causes of the abandonment of Congressional aid to road and canal building lay neither with President Jackson nor with strict construction. The building of turnpikes practically ceased with the advent of the railroad in 1830. The causes that led to the cessation of canal building were, first, the opposition to the tariff. The bitter struggle against the tariff of 1828 naturally included opposition to internal improvements – the other half of the American System.

The second cause – a somewhat complex one – is found in the land policy of the United States. The large revenues from the tariff and more especially from the land sales caused a treasury surplus to exist during the years from 1830 to 1836; this surplus led to distribution, and distribution did much to put an end to internal improvements by the federal government. This large surplus could not be lessened by altering the tariff because of the compromise of 1833; and the opposition to cheap lands was so strong that no measure decreasing the price of lands could be passed. In view of the existence of this surplus and in view of Jackson's opposition to Congressional aid to local works of improvement, the Whigs changed front in the midst of the battle. They began advocating the distribution of the surplus arising from land sales among the states, and the surrender to the states of the prosecution of works of internal improvement. President Jackson had favored this plan in 1829 and afterwards also; but in 1836 he abandoned distribution. The Whigs then very naturally clung to the idea all the more tenaciously. Distribution came in 1836 and with results so disastrous that there was soon no money to distribute. The odium attaching to distribution did much to bring into disrepute internal improvements, to foster which works the national funds had left the treasury.

The third cause for the overthrow of the canal, and the strongest one, was the railroad. The extension of railroads during the decade from 1830 to 1840 was rapid, and the superiority which they possess over canals as agents of most kinds of traffic was quickly recognized.

Professor Johnson discussed the attempt of the Whigs to include distribution in tariff legislation that President Tyler vetoed. "Had they succeeded the promotion of such works would probably have entirely ceased to be a national enterprise." As noted, when he signed protectionist tariff legislation in 1842, it had such a negative impact on the economy that it became known as the Black Tariff. Most appropriations for river and harbor projects from 1830 to 1870 were due to riders attached to other bills.

Congress took an interest in development of railroads, although it did not provide appropriations for their construction, as it had for roads, canals, and other internal improvements. The engineers acting under the General Survey Act of 1824 undertook numerous surveys for railroads. Congress removed import duties on railroad iron (1830-1841). As *America's Highway 1776-1976* explained, "The total duties remitted in this period – almost \$6 million – gave the infant railroad industry a much-needed boost at a critical time in its history . . ." Further, by Act of July 7, 1838, Congress designated the railroads as "post roads" eligible to carry the mail. "Strictly speaking, this was not a subsidy, but it opened to the railroads a valuable source of income." In earlier years, the revenue from carrying the mail had boosted the stagecoach companies.

Railroads usually were private speculations that were chartered by the States. Although Congress did not appropriate funds to promote railroad construction, the Federal Government had substantial public lands at its disposal to aid in their development. These lands had been used as grants to a number of States planning internal improvements such as canals. *America's Highways* continued:

The first Federal land grants for railroads were made to Illinois, Mississippi, and Alabama in 1850 and totaled 3,736,000 acres of land which the States transferred to the Illinois Central Railroad and the Mobile and Ohio Railroad. With these grants as a precedent, Congress in the period 1850 to 1871 aided some 50 other railroads by similar grants of public land to nine other southern and western States for a total of about 36,466,000 acres. Even larger grants were to come in connection with the Pacific railroads. Eventually, Federal land grants to subsidize railroads amounted to 130.3 million acres, to which should be added 48.9 million acres of State land grants.

The Last Whig Presidents

As it turned out, the only two Presidents to win on the Whig Party ticket – Presidents Harrison and Taylor – died before completing their term. General Taylor, the last President to own slaves while in office, died on July 9, 1850, apparently of cholera, at the age of 63 (the cause of his death has been a subject of speculation), as the country neared the breaking point in the slavery debate.

Vice President Millard Fillmore, elevated to the presidency, would be the last Whig Party President.

Author Bordewich, in his book about the slavery debate, discussed the transfer of power:

By 1848, Fillmore had been a presence in New York politics for most of twenty years Fillmore had naturally expected to assert considerable influence in the Taylor administration. Instead, he was humiliated to a degree that few men who have served in that notoriously unsatisfying job have ever been. It was obvious to everyone that his rival, [New York Senator William H.] Seward, had the president's ear, and that Fillmore was barely even welcome at the White House. "Where is Fillmore?" the *Albany Express* wondered, in May 1849. "He is nowhere." Apart from presiding, for the most part silently, over the Senate, he had nothing to do. To make matters worse, his wife, Abigail, loathed Washington, and remained mostly in New York. "How lonesome this room is in your absence," he wrote to her from his bachelor digs at the Willard Hotel in April 1850, sighing that he didn't even have anyone to play backgammon with. "I can hardly to bear to sit down."

Fillmore was numbed at the news of Taylor's death. "I have no language to express the emotions of my heart," he told the cabinet. "The shock is so sudden and unexpected that I am overwhelmed." On July 10, looking profoundly exhausted, he took the oath of office in a gloomy little ceremony in the House chamber. It was only the second time that a vice president had been thrust into the nation's highest office as a result of the chief executive's death, and the first time in the midst of a national crisis. He had barely slept, worrying that he might not be fitted for the job that was now his. Prayed one fearful Democrat, who in a letter to Fillmore wrote that he had never supported the Whigs, "May you be the instrument, in the hand of God, to save your country from ruin."

The new President's greatest accomplishment took place in September 1850 when he signed the series of bills known as the Compromise of 1850. With the slave States nearing secession, Senator Henry Clay, who had returned to office in March 1849, worked out a compromise with Senator Stephen Douglas of Illinois that balanced the slavery interests with those of abolitionists in the District of Columbia and the western territories. President Taylor had opposed the compromise, but President Fillmore signed them:

President Fillmore signed all the bills in quick succession, except for the Fugitive Slave Act, over which he hesitated – some said agonized – for two days. He had no fondness for slavery, though he had never expended any political capital to oppose it. He also expected to run for reelection in 1852, and had to consider whether he would lose more by offending the North or the South In the end, he threw in his lot with southern sentiment and, encouraged by [Senator] Webster and by Attorney General Crittenden, swallowed his inhibitions, draped himself in the Constitution, promised to enforce the law, and signed the bill

The compromise would hold the union together, but only temporarily.

President Fillmore's term ended on March 3, 1853.

The two last Whig Presidents were an aberration in the thinking of Presidents on internal improvements after 1838. Professor Hill wrote of them:

President Taylor, whose friendly attitude toward river and harbor improvements caused estimates to be presented, recommended without success that Congress consider new as well as old projects.

The story was much the same in 1850 and 1851. Practically the same estimates were again presented, but no appropriations were made. President Fillmore approved of plans for resuming these improvements, particularly of the Mississippi, its tributaries, and major lake harbors. He stated that improvements which were local in position, as the proposed ship canal at Sault Ste Marie, were nevertheless general in their benefits. He proposed to complete projects already begun and to commence such new ones "as may seem to the wisdom of Congress to be of public and general importance."

River and harbor improvement was finally resumed in 1852. Congress appropriated over \$2,000,000 for more than one hundred projects

President Fillmore assured Congress that economical and efficient arrangements had been made for executing river and harbor work on what he hoped would be a continuing basis. He explained that further appropriations were needed for their completion and that projects once begun should never be discontinued. He cautioned against commencing any work "which is not of sufficient importance to the commerce of the country to be viewed as national in its character."

Agar described President Taylor as an “amateur” who did not understand the role of politics in securing party loyalty. His early death left open what he might have achieved:

It is possible that his death was a blessing both to himself and to his country, for he was on the verge of a Cabinet scandal involving a lighthearted attitude toward the public funds on the part of the Attorney General, the Secretary of the Treasury, and the Secretary of War, and he was also on the verge of a sectional conflict which might well have led to fighting.

He described Fillmore as “an obscure ex-Congressman from New York State, [who] had been nominated for the vice-presidency in 1848 as a concession to the friends of Henry Clay, who were in a vengeful mood when General Taylor was given the first place on the ticket”:

Since hardly anyone had heard of Fillmore it was assumed that he would not lose the party many votes. He was a large man with a big, smooth, kindly face and impressive manners. He looked like a President and much to his surprise he had become one

Like President Taylor, Fillmore, unfortunately, “was not gifted with political insight.” He sought the Whig Party nomination in 1852, but after the convention deadlocked between him and Senator Webster on 52 ballots, the party turned to General Winfield Scott, a hero of the Mexican-American War, as the nominee.

President Franklin Pierce

The Whig Party collapsed after the 1852 presidential election. Its nominee, General Scott (nicknamed “Old Fuss and Feathers” for his age and insistence on military etiquette) was defeated by the Democrats’ Franklin Pierce, a former member of the U.S. House of Representatives (1833-1837) and the Senate (1837-1842) from Concord, New Hampshire. He had served in the Mexican-American War, rising to the rank of Brigadier General. The Democratic Party convention in Baltimore was deadlocked among several candidates before finally choosing Pierce on the 49th ballot. To balance the ticket, delegates then selected Senator William Rufus de Vane King of Alabama as the Vice Presidential nominee.

The Democratic Party platform emphasized that the Federal Government was “one of limited powers, derived solely from the constitution, and the grants of power made therein ought to be strictly construed by all the departments and agents of the government; and that it is inexpedient and dangerous to exercise doubtful constitutional powers.” With that in mind, the platform made clear that, “That the constitution does not confer upon the general government the power to commence and carry on a general system of internal improvements.”

General Pierce secured 1,607,510 votes and 254 electoral college votes, with 149 needed to win. General Scott received 1,386,942 votes and only 42 electoral votes. The Democrats also secured large majorities in the Senate and House.

General Scott, as it turned out, was the last Whig Party candidate. The party found that its policies were no longer aligned with the American people. The man who best embodied the philosophy of the party, Henry Clay, died on June 29, 1852.

On January 6, 1853, before heading to Washington for the inauguration, the Pierce family suffered a tragic loss. They were returning home from Boston by railroad after attending a funeral when the train derailed and overturned near Andover and rolled down a 20-foot embankment. Although President-elect Pierce and his wife Jane survived, their 11-year old son Benjamin was nearly decapitated. His death shook Jane, who wondered if it was divine punishment for her husband's pursuit of high office. She was too devastated to travel with her husband to Washington, and did not make a social appearance in Washington until January 1, 1855.

According to *The Baltimore Sun's* account of the inauguration:

Instead of rain, snow commenced slightly falling, but the frozen vapor presented no obstacle to the people. The rotunda of the Capitol was crowded to excess by the ladies, thousands of whom waited there from three to four hours to be present at the service in the Senate and at the east front of the Capitol; whilst Pennsylvania avenue was so densely thronged that pedestrian progress in either direction was almost impossible.

The Inaugural parade made its way down Louisiana Avenue to Pennsylvania Avenue, stopping at 16th Street, NW., to await President-elect Pierce's departure from Willard's Hotel. President-elect Pierce, accompanied by President Fillmore, emerged from the hotel to take his place in the procession. They were accompanied by members of the Cabinet and Judiciary, and other officials, "all in carriages; and here the magnificent coach and horses presented by the Bostonians to General Pierce, were generally noticed and admired."

President-elect Pierce's Democratic friends in Boston had presented the carriage and horses to him. The carriage, which was designed for open or closed use, weighed 1,300 pounds and had been manufactured by Jason Clapp & Son of Pittsfield, Massachusetts entirely of materials from the United States. ["The Inauguration of President Pierce," *The Baltimore Sun*, March 5, 1853; Collins, Herbert Ridgeway, *Presidents on Wheels: The Complete Collection of Carriages and Automobiles Used by Our American Presidents*, Acropolis Books, 1971]

Vice President-elect King was not in Washington. Ill with tuberculosis, he had gone to Cuba in the hope that the warmer climate would restore his health. By Act of March 24, 1853, he was allowed to take his oath of office in Cuba, the only Vice President to take the oath of office in a foreign country. He died there on April 18, 1853. Because, as previously noted, the Constitution did not cover replacement of the Vice President, President Pierce would be without a Vice President for the remainder of his term. (Approval of the 25th Amendment to the Constitution in 1967 addressed replacement of the Vice President.)

At 48 years old, President Pierce replaced President Polk as the youngest President to that date. (Today, the youngest President at the time of inauguration was Theodore Roosevelt, who was 42 when he became President following the death of President William McKinley in 1901.) In other firsts, President Pierce was the first and only President, to date, to deliver his Inaugural Address from memory. In addition, with his son's death in mind, he also was the only President who did not take his oath by swearing on a Bible; he affirmed his oath.

He began his Inaugural Address humbly:

It is a relief to feel that no heart but my own can know the personal regret and bitter sorrow over which I have been borne to a position so suitable for others rather than desirable for myself You have summoned me in my weakness; you must sustain me by your strength.

He stressed the foundation of the Democratic Party:

In the administration of domestic affairs you expect a devoted integrity in the public service and an observance of rigid economy in all departments, so marked as never justly to be questioned The dangers of a concentration of all power in the general government of a confederacy so vast as ours are too obvious to be disregarded. You have a right, therefore, to expect your agents in every department to regard strictly the limits imposed upon them by the Constitution of the United States If the Federal Government will confine itself to the exercise of powers clearly granted by the Constitution, it can hardly happen that its action upon any question should endanger the institutions of the States or interfere with their right to manage matters strictly domestic according to the will of their own people.

For Secretary of War, President Pierce selected Jefferson Davis of Mississippi. Davis, whose first wife, Sarah Knox Taylor, was the daughter of General Taylor (she died of malaria at age 21), was a graduate of West Point who had served in the Army before winning election to the House of Representatives in 1844 as a Mississippi Democrat. He resigned in 1846 to serve in the Mexican-American War. (Although Davis is known today primarily as the traitorous president of the Confederate States of America (1861-1865), at the time of his nomination as Secretary of War, he was considered a loyal American from a slave State who had a long career in service to the United States government.)

Professor Hill discussed the impact of this choice:

Although the Pacific railroad surveys made heavy demands on the army engineers in 1853, river and harbor projects were executed on a large scale. The two boards of engineers for river and harbor improvements inspected these works and reviewed plans and estimates for new projects. A major change took place, however, in the manner in which improvements were planned and executed. Jefferson Davis, President Pierce's secretary of war, ruled that individual projects

must be planned so as to be completed with existing appropriations. He noted that most plans approved previously had been based on a different principle – the assumption that further grants would be made. Plans had sometimes been adopted which necessitated funds ten times as large as the original appropriations to complete them. He stated his new policy as follows:

The general provision in regard to these works is a simple direction to apply a certain sum to a specified object, without any intimation of an intention on the part of Congress to make further appropriations, and I deemed it to be improper to expend those appropriations in commencing works on a scale which the department has not means to complete, and which must in a great measure be lost, unless Congress make further appropriations for them.

Many projects had been started without adequate appropriations. Local officials were willing to raise funds or secure donated goods to finish the projects, but the War Department was not willing to accept the aid:

On June 4, 1853, Davis issued a War Department regulation stating that local funds could be used to continue unfinished river or harbor works for which Congress had previously made appropriations if certain conditions were met. These were that such projects must be continued according to original War Department plans, that an army engineer must supervise operations, that this officer must not handle or be responsible for the disbursing of funds, and that his supervisory work must not be construed to imply any claim for reimbursement or any expectation of further appropriations by Congress.

President Pierce, based on his interpretation of the Constitution, objected to appropriations for local projects; he refused to provide estimates of such proposals, as Professor Hill explained:

President Pierce insisted on strict interpretation of the power to improve harbors and rivers. He vetoed a river and harbor bill on the grounds that it contained purely local items and constituted a general system of improvements which the government lacked power to execute. He proposed that each appropriation be in a separate bill to aid determination of its national or local character and its relation to the exercise of delegated powers. He approved of harbor improvement by individual states and noted that the Constitution permitted states to levy tonnage duties with the consent of Congress.

President Pierce vetoed nine bills, including six of internal improvements bills. Congress overrode five of the six:

- H.R. 392 – Making appropriations for the repair, preservation, and completion of certain public works, heretofore commenced under authority of law. Sustained
- S. 1 – Making an appropriation for deepening the channel over the St. Clair Flats, in the State of Michigan. Overridden

- S. 2 – Making an appropriation for deepening the channel over the flats of the St. Mary’s River, in the State of Michigan. Overridden
- S. 14 – To remove obstructions to navigation in the mouth of the Mississippi River, at the Southwest Pass and Pass a l’Outre. Overridden
- S. 53 – For the improvement of the navigation of the Patapsco River, and to render the port of Baltimore accessible to the war steamers of the United States. Overridden
- H.R. 12 – For continuing the improvement of the Des Moines Rapids, in the Mississippi River. Overridden

Although the Compromise of 1850 had postponed a civil war, the country was strongly divided on the issue of slavery as President Pierce took office. As Agar explained, President Pierce’s Cabinet choices became his first problem:

Instead of insisting on men who upheld the Union and the election promises, Pierce put into his Cabinet able and forceful representatives of every diverse opinion. So his Administration was doomed to become a minor civil war within itself. And if one side conquered in the family quarrel, it would impose fresh disturbances at a time when the country craved and deserved a rest.

Much of the Cabinet “was of light weight”:

Its importance lay in the fact that it was disunited, and that the men who stood by the Union were no match for the men who stood by the South. Benton said that the subsequent four years should not be known as the Pierce Administration, since Pierce could never control his own followers. It was an Administration in which he was inoperative, and in which nullifiers, disunionists, and renegades used his name and his power for their own audacious and criminal purposes.

Professor Hill summed up the internal improvement legacy of President’s Van Buren through Pierce:

River and harbor improvements were brought to a standstill on three occasions under Van Buren, Polk, and Pierce. Failure to agree on the question of constitutionality in a period of increasing sectional antagonism prevented continuous execution even of major improvements admitted by all parties to be of a national character and within the government’s power. Under these conditions the government was unable to formulate an effective system for administering these improvements, and the army engineers failed to achieve extensive or lasting benefits.

President James Buchanan

President Pierce hoped to secure the Democratic Party’s nomination for a second term, while Senator Stephen Douglas of Illinois was a strong candidate. However, after seventeen ballots, the party selected James Buchanan as its nominee. He was joined on the ticket by John C. Breckinridge of Kentucky, a member of the U.S. House of

Representatives (1851-1855). The Democratic Party platform included the usual restrictions, including on development of a general system of internal improvements.

With the collapse of the Whig Party, a new Republican Party formed in time for the 1856 election. The party nominated the popular "Pathfinder," John C. Frémont of California, for President and William L. Dayton of New Jersey, a former Senator (1842-1851) for Vice President. The new party's platform opposed the expansion of slavery into free territory; denied the authority of Congress or a territory to give legal existence to slavery in any territory "while the present Constitution shall be maintained; favored a railroad to the Pacific Ocean, with immediate Federal assistance, "and as an auxiliary thereto, to the immediate construction of an emigrant road on the line of the railroad"; and:

Resolved, That appropriations by Congress for the improvement of rivers and harbors, of a national character, required for the accommodation and security of our existing commerce, are authorized by the Constitution, and justified by the obligation of the Government to protect the lives and property of its citizens.

One of the party's slogan was: "Freedom, Frémont, and the Railroad."

The race had a distinguished third candidate, former President Fillmore. He was the candidate of the Know Nothing Party (originally the Native American Party but called the American Party beginning in 1855). His running mate was Andrew J. Donelson, who as noted earlier, was a member of President Jackson's family. Agar said of the former President's effort:

In 1856 poor harmless Millard Fillmore became the presidential candidate of the Southern Know-Nothings. He received 875,000 votes and carried only the state of Maryland. Thus ended the party of intolerance, the party described by one indignant Southern believer in freedom of religion as a "stupendous and far-reaching leprosy."

The year 1856 also saw the end of the Whigs, whose dejected remnant had held a convention in Baltimore in September and had endorsed Fillmore as the candidate least likely to disturb the peace of the nation. In the election some of the Whigs voted for Fillmore, some for Buchanan (the Democratic candidate), and many for the new Republican Party. Fillmore's utter defeat meant that in the future such Whigs as wished to play a serious part in politics must join the Democrats or the Republicans.

Buchanan was an easy victor, securing 1,836,072 votes, compared with 1,342,345 for

Frémont and 873,053 for Fillmore. With 149 electoral votes needed to win, Buchanan received 174, while Frémont received 114 and former President Fillmore only 8.

If ever a President had credentials promising accomplishment, if not greatness, it was James Buchanan. He had practiced law in Lancaster, Pennsylvania, and volunteered in the War of 1812. He served in the State House of Representatives (1814-1816) and in the U.S. House of Representatives (1821-1831). He was Minister to Russia (1832-1834), a

United States Senator (1834-1845), Secretary of State under President Polk (1845-1849), and Minister to Great Britain (1853-1856).

With that background, he had understandable presidential ambitions, but in the tradition of the times, he did not work publicly for this goal. In the background, however, he and his allies quietly sought the Democratic Party's nomination without success through several election cycles, until finally reaching their goal in 1856.

In January 1857, President-elect Buchanan left his estate, called Wheatland, near Lancaster, for a railroad trip to Washington where he intended to plan for his inauguration and presidency. While staying at the National Hotel, however, he was one of many guests who became seriously ill. A contemporary account in the *Lancaster Express*, dating to his departure from Wheatland for his inauguration, explained what happened:

It appears that this hotel has been terribly infested with rats of late, and one of the boarders – as the story goes – conceived the idea that they ought to be disposed of effectually before the day of inauguration. Accordingly, he procured extra doses of arsenic, which he disposed of in the most tempting manner about the house. The rats ate the poison. It is well known that when rats partake of arsenic they put directly for water. There is a large tank of water in the upper part of the hotel referred to, and into this the host of rats plunged, drank, bursted and died. From the tank the house is supplied with water for drinking and cooking purposes.

Twenty or thirty of the guests were suddenly and some of them severely affected, from the use of water thus impregnated with the poison. Mr. Buchanan left suddenly for Wheatland, where he arrived suffering severely from diarrhea. He was, however, less severely affected than the others, and in a short time recovered sufficiently to receive visitors – but the fatigue incident to entertaining two or three hundred persons, made it absolutely necessary for him to husband his strength by refusing to see any but his most intimate personal friends – a rule which was rigidly observed up to the hour of his departure this morning.

The illness was soon nicknamed as “National Hotel Disease.” Although the cause is still a subject of debate, the disease caused as many as three dozen deaths. The disease was still strong in March during the inauguration.

On March 2, a bitter cold day with considerable snow that had fallen overnight, President-elect Buchanan began his journey, again, from Lancaster to Washington. A contemporary account reported:

About 6 o'clock the bells of all the churches, the Courthouse, fire companies, &c., commenced ringing, and continued for almost half an hour, added to which the occasional boom of cannon from College Hill, aroused our citizens, and reminded them that one of the proudest days in the history of our city had arrived.

Hundreds of citizens moved to the centre-square where local officials led them along West King Street to Wheatland. President-elect Buchanan greeted them “with that

blandness of manner that distinguishes him, adding, however, an expression of regret that they should have placed themselves to so much inconvenience and discomfort for his sake.”

Eager to see him, the crowd surrounded the private carriage that waited for him, “pressed so close to it, as almost to prevent the necessary movements of its driver”:

Presently, Mr. B. was soon to issue from a door in one of the wings of the house, where he bade farewell to all the members of his household, and in company with his niece, Miss Lane, took his seat in the carriage. Quite a number here shook hands with him, and in response to the greetings of many, he politely returned the compliment in his own graceful style.

As the only President who never married, President-elect Buchanan was accompanied by his niece, Harriet Lane, who would serve the traditional social functions of the First Lady. Led by the crowd, the driver turned the carriage toward the city. As the procession traveled along West King Street, the crowd grew to over 2,000 people:

All along the line of this street, vast crowds of people were stretched, all desirous of showing their approbation of the man who was so soon to be elevated to the highest post in the nation, while the ladies in great numbers crowded the windows and balconies of the houses, waving their handkerchiefs, and adding the principal figure in the scenes of the day.

As the parade passed through centre-square, “the people could no longer restrain their enthusiasm, and gave vent to huzzas over and over again.” Bells rang and continued as the parade passed along North Queen Street to the railroad depot:

As Mr. Buchanan changed from the carriage to the cars, the pressure to get a sight of him was even greater than before, and many rushed up to bid him adieu. He seemed to be greatly affected, and answered all their congratulations with an earnestness and sincerity that showed he felt what he said. After he had been seated at the window of the car, he again shook hands with numbers, who pressed up to do so. As the train moved off, he politely returned the demonstrations of respect, in return to which the crowd sent up cheer after cheer, that plainly showed there was nothing but the heart-felt outpouring of its sentiments at work.

The Philadelphia and Columbia Railroad had prepared a special four-car train decorated with patriotic scenes. By 9, they were in Columbia, west of Lancaster, where a large crowd greeted the President-elect and his party. They switched to a special train arranged by the Northern Central Railroad that “presented a fine appearance.” The train crossed the bridge over the Susquehanna River to Wrightsville:

At this place there was, also, a large assemblage of people; and the same manifestations of enthusiasm were there continued. At York the *dépôt* was crowded with people, who, during the few minutes spent there, thronged about the car in which Mr. Buchanan was seated, and expressed their feelings in continued hurrahs.

At Glen Rock near the border with Maryland, a committee from Baltimore met the train as it rolled toward that city:

From this point the train made but one stoppage. At many of the way stations along the road the people had gathered, and the cheers of the men and the waving handkerchiefs of the other sex, greeted the train as it swept rapidly on.

Crowds had gathered in Baltimore and around the Bolton depot:

Mr. Buchanan was received with great enthusiasm, all joining heartily in welcoming and greeting the choice of the nation, and forgetting past political excitements in the national hope for a wise, impartial, and patriotic administration of the Government for the next four years.

President-elect Buchanan and Mayor Swann led a parade in an open barouche drawn by six gray horses “up Madison to Howard-street, down Howard to Baltimore and thence through Calvert-street to the City Hotel, where the distinguished guests alighted and were enthusiastically greeted by the throng of citizens assembled”:

Throughout the whole line of the procession the streets and houses were thronged with spectators, and the President elect gracefully acknowledged the complimentary greetings with which he was received, carefully avoiding all unnecessary exposure to the searching and cutting wind, by uncovering, except in return to the compliments of the ladies.

They arrived at the hotel, considered one of the most opulent in the country, at about 2:30 p.m. After exchanging greetings with local officials, President-elect Buchanan and his party headed to the Baltimore and Ohio Railroad station at Camden Square:

On reaching the dépôt the President elect was taken in charge by W. Prescott Smith, Esq., and other officers of the Company, and a magnificent new car, in readiness for the occasion, was attached to the train then ready to start, and in a few minutes he was on his way to Washington where the telegraphs informed us he arrived at a quarter before 5 o'clock, and reached his hotel before his arrival in the city was known.

Despite his experience in January, President Buchanan and his party stayed at the National Hotel.

On Wednesday, March 4, 1857, the inauguration was, according to *The Baltimore Sun*, “the most imposing in numbers, and the most brilliant in display, ever witnessed here.” The *Sun* continued:

Facility of transportation from all the principal cities, North, South, East, and West, offered inducement which did not exist on any former occasion, and were gladly appropriated for a sort of national holiday at the Capital.

An account in *The New York Times* described the day:

Everything was stirring in the city at an early hour this morning, and the streets were alive with the multitudes. Pennsylvania-avenue presented a most animated appearance. Flags waved from all the hotels and public buildings, and from many private houses. The movements of military companies, preparing to take their places in the line of processions, gave a particularly lively character to the scene

The procession started for the Capitol about noon. It was very long, and presented a beautiful appearance.

At the National Hotel, the parade halted for President Pierce and President-elect Buchanan, who boarded an “elegant barouche, drawn by four horses.” The parade resumed, with the open carriage immediately behind the rear of the military. Vice President-elect Breckinridge also was in an open carriage. (As noted, his Pierce Administration counterpart had died in Cuba.) The two carriages were surrounded by members of the Keystone Club and preceded by the military and displays such as a “representation by a lady dressed as the Goddess of Liberty on a high platform drawn by six horses, followed by a miniature ship-of-war of considerable size, made by the mechanics of the Washington Navy Yard.”

They arrived at the Capitol around 1 o’clock and entered by the north door on their way to the Senate where Vice President Breckinridge took his oath of office. In the tradition of his predecessors, he delivered a short, humble address. He brought to the duties of his new role as president of the Senate “few other qualities than a deep sense of the importance of this body in the scheme of the Government, and a feeling of respect for its members.” His duties, he said, were “comparatively few and simple, and I am sure that they will be made easy by a pervading sense of propriety which will of itself be sufficient on all occasions to preserve the dignity and decorum of the Senate.” He concluded:

It shall be my constant aim, gentlemen of the Senate, to exhibit at all times, to every member of this body, the courtesy and impartiality which are due to the representatives of equal States.

[“Narrow Escape of the President Elect from a Violent Death,” “The Journey to Washington,” “The Inauguration,” *The New York Times*, March 5, 1857]

They proceeded to the platform on the East Portico for the public ceremony. A photographer, John Wood, would take the first photograph of an inauguration.

Much of President Buchanan’s Inaugural Address related to the slavery issue that had dominated Washington for years, particularly whether new western territories and States would allow slavery. He quoted the Kansas-Nebraska Act of 1854, which provided that Congress would neither “legislate slavery into any Territory or State nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.” He commended this provision and said the issue was mainly a judicial question

that “will, it is understood, be speedily and finally settled.” He added, “To their decision in common with all good citizens, I shall cheerfully submit, whatever this may be”

He said that once that issue was settled:

No other question remains for adjustment, because all agree that under the Constitution slavery in the States is beyond the reach of any human power except that of the respective States themselves wherein it exists. May we not, then, hope that the long agitation on this subject is approaching its end, and that the geographical parties to which it has given birth, so much dreaded by the Father of his Country, will speedily become extinct? Most happy will it be for the country when the public mind shall be diverted from this question to others of more pressing and practical importance.

Moving on, he noted that the country’s financial condition “is without parallel in history. No nation has ever before been embarrassed from too large a surplus in its Treasury”:

It produces wild schemes of expenditure and begets a race of speculators and jobbers, whose ingenuity is exerted in contriving and promoting expedients to obtain public money. The purity of official agents, whether rightfully or wrongfully, is suspected, and the character of the government suffers in the estimate of the people. This is in itself a very great evil.

The natural mode of relief from this embarrassment is to appropriate the surplus in the Treasury to great national objects for which a clear warrant can be found in the Constitution. Among these I might mention the extinguishment of the public debt, a reasonable increase of the Navy, which is at present inadequate to the protection of our vast tonnage afloat, now greater than that of any other nation, as well as to the defense of our extended seacoast.

The Constitution was “a grant from the States to Congress of certain specific powers, and the question whether this grant should be liberally or strictly construed more or less divided political parties from the beginning.” Long experience had taught him that “a strict construction of the powers of the Government is the only true, as well as the only safe, theory of the Constitution.” Whenever the country departed from the strict interpretation, the results “have never failed to produce injurious and unhappy consequences”:

Many such instances might be adduced if this were the proper occasion. Neither is it necessary for the public service to strain the language of the Constitution, because all the great and useful powers required for a successful administration of the Government, both in peace and in war, have been granted, either in express terms or by the plainest implication.

While “deeply convinced” of this truth, he believed that “under the war-making power Congress may appropriate money toward the construction of a military road when this is absolutely necessary for the defense of any State or Territory of the Union against foreign invasion.” With that constitutional authority, he asked how else “to afford this protection

to California and our Pacific possessions except by means of a military road through the Territories of the United States, over which men and munitions of war may be speedily transported from the Atlantic States to meet and to repel the invader?" He pointed out that if war did break out in the West, the opponent "would instantly close the route across the isthmus of Central America" for transportation of military forces. He would forbear presenting an opinion "as to the wisest and most economical mode in which the Government can lend its aid in accomplishing this great and necessary work."

Chief Justice Taney administered the oath of office to President James Buchanan.

The Supreme Court's Action

The Supreme Court opinion President Buchanan was waiting for was *Dred Scott v. Sandford*. He had urged Chief Justice Taney to go beyond the facts of the case to address the broader issues of slavery that had enflamed the country. The facts were whether a slave, Dred Scott, who was taken by his owner, Dr. John Emerson, from the slave State of Missouri to the free State of Illinois, was a slave after his owner died and his widow sold the slave to John F. A. Sandford.

On March 6, 1857, two days after President Buchanan took the oath of office, Chief Justice Taney released the court's 7-2 opinion in *Dred Scott v. Sandford*. Under the decision, descendants of black Africans – whether free or slave – could not be citizens of a State under the Constitution. Slaves had no right to freedom or to pursue freedom in the courts; they were property subject only to the conditions of sale. Previous compromises that Congress had produced on the issue of slavery in the country's new territories and States were unconstitutional.

Although President Buchanan may have thought that "all good citizens" would cheerfully submit to the opinion, it deepened divides by satisfying the Southern slave States, aggravating the northern free States, and increasing tensions in the new States and territories. Today, the opinion in *Dred Scott v. Sandford* is widely considered one of the worst findings in the history of the Supreme Court, maybe the worst, and a dark moment in the Nation's history. In addition to worsening race relations for a century, the opinion reopened confrontations over slavery that had been left unsettled by compromise in an uneasy peace.

Another side effect was that the opinion, with its uncertain impacts in the time after its release, resulted in reduced railroad travel to the western territories. This uncertainty was one factor undermining the fortunes of railroads – and that, in turn, was a factor in the Panic of 1857. As the railroad stock "bubble" burst, the stock market crashed; the Ohio Life and Insurance Company failed, taking with it associated banks and mortgage companies; the S.S. Central America sank during a hurricane off the coast of the Carolinas in September 1857, depriving eastern banks of 30,000 pounds of much-needed gold valued at \$8 million in a time when paper money was redeemable for gold; and actions in Great Britain regarding the backing for paper money further destabilized the economy.

By the time of President Buchanan's first annual message to Congress on December 8, 1857, he acknowledged that, notwithstanding all its advantages "our country in its monetary interests is at the present moment in a deplorable condition":

In the midst of unsurpassed plenty in all the productions of agriculture and in all the elements of national wealth, we find our manufactures suspended, our public works retarded, our private enterprises of different kinds abandoned, and thousands of useful laborers thrown out of employment and reduced to want. The revenue of the Government, which is chiefly derived from duties on imports from abroad, has been greatly reduced, whilst the appropriations made by Congress at its last session for the current fiscal year are very large in amount.

He looked on the bright side:

The late disastrous monetary revulsion may have one good effect should it cause both the Government and the people to return to the practice of a wise and judicious economy both in public and private expenditures. An overflowing Treasury has led to habits of prodigality and extravagance in our legislation. It has induced Congress to make large appropriations to objects for which they never would have provided had it been necessary to raise the amount of revenue required to meet them by increased taxation or by loans. We are now compelled to pause in our career and to scrutinize our expenditures with the utmost vigilance; and in performing this duty I pledge my cooperation to the extent of my constitutional competency.

By true public economy, he did not mean withholding funds from important national objects, especially for the common defense:

In the present crisis of the country it is our duty to confine our appropriations to objects of this character, unless in cases where justice to individuals may demand a different course. In all cases care ought to be taken that the money granted by Congress shall be faithfully and economically applied.

He went on to discuss the factors affecting the downturn, the long running battle over the issue of slavery in Kansas, the growing dispute with the Mormon government of Utah, and international relations.

He also returned to the subject of the military road to the Pacific States that he had mentioned in his Inaugural Address. He explained that such a project was well within the scope of the Constitution and, therefore, "it is our imperative duty to construct such a road." However, he expanded the idea of a road to a railroad:

The difficulties and the expense of constructing a military railroad to connect our Atlantic and Pacific States have been greatly exaggerated. The distance on the Arizona route, near the thirty-second parallel of north latitude, between the western boundary of Texas, on the Rio Grande, and the eastern boundary of California, on the Colorado, from the best explorations now within our knowledge, does not exceed 470 miles, and the face of the country is in the main

favorable. For obvious reasons the Government ought not to undertake the work itself by means of its own agents. This ought to be committed to other agencies, which Congress might assist, either by grants of land or money, or by both, upon such terms and conditions as they may deem most beneficial for the country. Provision might thus be made not only for the safe, rapid, and economical transportation of troops and munitions of war, but also of the public mails.

The commercial interests of the whole country, both East and West, would be greatly promoted by such a road, and, above all, it would be a powerful additional bond of union. And although advantages of this kind, whether postal, commercial, or political, can not confer constitutional power, yet they may furnish auxiliary arguments in favor of expediting a work which, in my judgment, is clearly embraced within the war-making power.

For these reasons I commend to the friendly consideration of Congress the subject of the Pacific Railroad, without finally committing myself to any particular route.

In addition, he discussed the latest report by the Postmaster General, including “the report of the Department in relation to the establishment of the overland mail route from the Mississippi River to San Francisco, Cal.” He added that, “The route was selected with my full concurrence, as the one, in my judgment, best calculated to attain the important objects contemplated by Congress.”

According to Winifred Gallagher’s history of the United States Post Office, the need for such a service was critical, with Californians demanding “a communications upgrade: a reputable, regularly scheduled, twice-weekly stagecoach service that would carry both mail and travelers.”

On March 3, 1857, President Pierce, on his last full day in office, signed “An Act making Appropriations for the Service of the Post-Office Department during the fiscal Year ending the thirtieth of June, eighteen hundred and fifty-eight.” The legislation included provisions for award of a contract, not to exceed \$300,000 a year, to carry mail from the Mississippi River to San Francisco. Selecting the route was controversial:

However, antebellum politics immediately complicated the overland mail service’s birth. The northerners who controlled the House wanted a northerly route from the railroad’s Missouri terminus. The southerners who ruled the Senate favored a more circuitous southerly path down through Texas – a much easier trip in terms of terrain, weather, and avoiding hostile Indians but also 900 miles longer, thus slower

Despite outraged protests from the eastern and Californian press, in 1857, Postmaster General Aaron Brown, not coincidentally a Tennessean, awarded the stagecoach contract to the Butterfield Overland Mail Company, which would operate on the southerly route.

Its swooping curves from Missouri through Tennessee, into Texas, across New Mexico and Arizona before hitting California gave the line the nickname of the Oxbow Route

because to contemporaries, the route depicted on a map looked like an oxbow (the U-shaped harness for oxen). The 2,795-mile, twice-a-week trip took 25 days. When service began on September 15, 1858, President Buchanan telegraphed the successful contractor, John Butterfield:

I cordially congratulate you upon the result. It is a glorious triumph for civilization and the Union. Settlements will soon follow the course of the road, and the East and West will be bound together by a chain of living Americans which can never be broken.

Gallagher summarized the result:

As Congress correctly bet, the costly mail route would also become the developmental spine from which would spring settlements, industries, and the future transcontinental telegraph and railroad. [Gallagher, Winifred, *How The Post Office Created America: A History*, Penguin Press, 2016]

While the Butterfield Overland Mail would be a precursor to the Transcontinental Railroad, the rail line would be advanced after the start of the Civil War when the oxbow route through Confederate States was no longer feasible; it would follow a direct line from Missouri to California, with the Rocky Mountains as the chief physical barrier.

According to Professor John Hoyt Williams's history of the Transcontinental Railroad, President Buchanan, while faithful to his party's pledge, had little time for the railroad:

Dealing from the first days of his administration with sectional crises and [Mormon] rebellion in the West, Buchanan could not even spare the time to read a pamphlet published in January 1857 and sent to him by its author, Theodore Dehone Judah. Entitled *A Practical Plan for Building the Pacific Railroad*, the pamphlet – and its author – would soon have more impact than the hundreds of memorials and petitions presented to Congress over the years.

Judah sent copies of his pamphlet to every Member of Congress as well as to the President:

This was the first genuinely “practical” plan of its nature, based upon data far more scientific than had been gathered by any of the 1853-55 survey teams, and in fact, covering a portion of the Sierras totally ignored by Jefferson Davis's engineers.

Shortly after returning to the capital, Judah secured an audience with President Buchanan on December 6, 1859. In addition, Judah was allowed to set up an office in the Capitol that he called his “Pacific Railroad Museum,” where he displayed drawings, maps, and data. While the congressional response was positive, Congress was too preoccupied with the divisive tensions of the debates on slavery to act on the railroad concept. President Buchanan would reiterate his support for the Pacific Railroad, but his successor, President Abraham Lincoln, would launch the Transcontinental Railroad project by

signing the Pacific Railroad Act on July 2, 1862. [Williams, John Hoyt, *A Great and Shining Road: The Epic Story of the Transcontinental Railroad*, Times Books, 1988]

As noted, President Buchanan followed the lead of his Democratic Party on internal improvements. Of his seven vetoes, two involved river and harbor bills. On February 1, 1860, he vetoed “An act making an appropriation for deepening the channel over the St. Clair flats, in the State of Michigan.” His veto message began with a practical consideration. The appropriation of \$55,000 was for work that had “been already substantially accomplished.” He was not saying “the work had been completed in the best manner, but it was sufficient for all practical purposes.”

Beyond the practical consideration was the constitutional question. He asked, “Does Congress possess the power under the Constitution to deepen the channels of rivers and to create and improve harbors for purposes of commerce?” The issue had been debated so frequently that “it would seem useless on this occasion to repeat or to refute at length arguments which have been so often advanced.” His own views had been expressed by President Polk in his veto message of December 15, 1847, while President Buchanan was Secretary of State.

Nevertheless, he went on to explain that the only possible authority for the appropriation, if one existed, was the constitutional power “to regulate commerce.” He did not believe the word “regulate” embraced the power to create or construct. “To say that it does is to confound the meaning of words of well-known signification.” The word “regulate” presupposed that something existed that could be regulated:

The words “regulate,” “regulation,” and “regulations” occur several times in the Constitution, but always with this subordinate meaning So the Constitution, acting upon the self-evident fact that “commerce with foreign nations and among the several States and with the Indian Tribes” already existed, conferred upon Congress the power “to regulate” this commerce.

Chief Justice Marshall, President Buchanan pointed out, had said the power to regulate commerce “is the power to prescribe the rule by which commerce is to be governed.” [Gibbons v. Ogden, March 2, 1824] The President also quoted President Madison’s veto of March 3, 1817:

“The power to regulate commerce among the States” can not include a power to construct roads and canals and to improve the navigation of water courses, in order to facilitate, promote, and secure such commerce without a latitude of construction departing from the ordinary import of the terms, strengthened by the known inconveniences which doubtless led to the grant of this remedial power to Congress.

The framers knew that under the Articles of Confederation, when States imposed different duties on goods, “jealousies and dangerous rivalries had sprung up between the different States.” Remedying these evils was the primary reason why the phrase was included in the Constitution:

It is not too much to assert that no human being in existence when the Constitution was framed entertained the idea or the apprehension that by conferring upon Congress the power to regulate commerce its framers intended to embrace the power of constructing roads and canals and of creating and improving harbors and deepening the channels of rivers through our extensive Confederacy. Indeed, one important branch of this very power had been denied to Congress in express terms by the Convention. A proposition was made in the Convention to confer on Congress the power “to provide for the cutting of canals when deemed necessary.” This was rejected by the strong majority of eight States to three. Among the reasons given for this rejection was that “the expense in such cases will fall on the United States and the benefits accrue to the places where the canals may be cut.”

In short, to accept the view that “regulation” implied creation of a system of internal improvements “would be to adopt a latitude of construction under which all political power might be usurped by the Federal Government.” Such an interpretation “would be in conflict with the well-known jealousy against Federal power which actuated the framers of the Constitution”:

The distinctive spirit and character which pervades the Constitution is that the powers of the General Government are confined to our intercourse with foreign nations, to questions of peace and war, and to subjects of common interest to all the States, carefully leaving the internal and domestic concerns of each individual State to be controlled by its own people and legislature In nothing does the wisdom of its framers appear more conspicuously than in the care with which they sought to avoid the danger to our institutions which must necessarily result from the interference of the Federal Government with the local concerns of the States. The jarring and collision which would occur from the exercise by two separate governments of jurisdiction over the same subjects could not fail to produce disastrous consequences. Besides, the corrupting and seducing money influence exerted by the General Government in carrying into effect a system of internal improvements might be perverted to increase and consolidate its own power to the detriment of the rights of the States.

Considering all possible improvements in the vast United States, “The truth is that most of these improvements are in a great degree local in their character and for the especial benefit of corporations or individuals in their vicinity, though they may have an odor of nationality on the principle that whatever benefits any part indirectly benefits the whole.”

He drew conclusions from experience:

From our past history we may have a small foretaste of the cost of reviving the system of internal improvements.

For more than thirty years after the adoption of the Federal Constitution the power to appropriate money for the construction of internal improvements was neither claimed nor exercised by Congress. After its commencement, in 1820 and 1821,

by very small and modest appropriations for surveys, it advanced with such rapid strides that within the brief period of ten years, according to President Polk “the sum asked for from the Treasury for various projects amounted to more than \$200,000,000.” The vetoes of General Jackson and several of his successors have impeded the progress of the system and limited its extent, but have not altogether destroyed it. The time has now arrived for a final decision of the question. If the power exists, a general system should be adopted which would make some approach to justice among all the States, if this be possible.

President Buchanan did not mention the Cumberland Road in his veto message.

He understood that from an “honest desire to promote the interests of their constituents,” Congress would revert to a system of logrolling (“I know of no word so expressive,” he wrote) that would exhaust the Treasury and deprive the Federal Government “of the means necessary to execute those great powers clearly confided to it by the Constitution for the purpose of promoting the interests and vindicating the honor of the country.”

He added that using the tonnage provision in the Constitution, Michigan could, with congressional consent, impose a “very insignificant tonnage duty on American vessels.” Thus, “a clear constitutional mode exists by which the legislature of Michigan may, in its discretion, raise money to preserve the channel of the St. Clair River at its present depth or to render it deeper.”

He concluded the message by writing about an exception:

In what I have said I do not mean to intimate a doubt of the power of Congress to construct internal improvements as may be essentially necessary for defense and protection against the invasion of a foreign enemy. The power to declare war and the obligation to protect each State against invasion clearly cover such cases. It will scarcely be claimed, however, that the improvement of the St. Clair River is within this category. This river is the boundary line between the United States and the British Province of Upper Canada. Any improvement of its navigation, therefore, which we could make for purposes of war would equally inure to the benefit of Great Britain, the only enemy which could possibly confront us in that quarter. War would be a sad calamity for both nations, but should it ever, unhappily, exist, the battles will not be fought on the St. Clair River or on the lakes with which it communicates.

Earlier, he had pocket vetoed a bill that Congress had passed at the end of its session in March 1859: “in relation to removal of obstructions to navigation in the mouth of the Mississippi River.” On February 6, 1860, a few days after his previous veto message, he submitted a brief veto message on the earlier veto. He referenced the points he had made in his veto message of February 1, and simply observed that Congress had appropriated sums totaling \$690,000 for this same purpose, “yet it is now acknowledged that this money had been expended with but little, if any, practical benefit to its navigation.”

President Buchanan had pledged to serve only one term. For the 1860 presidential election, the Democratic Party split over the slavery issue. The party nominated Illinois Senator Stephen A. Douglas, but his view that each territory should decide on the status of slavery alienated southern Democrats. They chose their own candidate, Vice President Breckinridge. In addition, the Constitutional Union Convention nominated former Senator John Bell of Tennessee for President, with former Senator Edward Everett of Massachusetts the nominee for Vice President.

The Republican Party, in its second presidential election since forming after the breakup of the Whig Party, nominated former Representative Abraham Lincoln for President and Senator Hannibal Hamlin of Maine for Vice President. The party's platform reinforced a founding concept:

That the maintenance of the principles promulgated in the Declaration of Independence and embodied in the Federal Constitution, "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed," is essential to the preservation of our Republican institutions; and that the Federal Constitution, the Rights of the States, and the Union of the States must and shall be preserved.

It denounced slavery:

The new interpretation of the Constitution that allows slavery in all the territories "is a dangerous political heresy, at variance with the explicit provisions of that instrument itself." The normal condition "is that of freedom," with freedom deprived only with due process of law, a provision of the Constitution that must be maintained. The platform denied "the authority of Congress, of a territorial legislature, or of any individuals, to give legal existence to slavery in any territory of the United States." The restoration of the African slave trade "under the cover of our national flag, aided by perversions of judicial power," was "a crime against humanity and a burning shame to our country and age." The platform called on Congress "to take prompt and efficient measures for the total and final suppression of that execrable traffic."

It opposed disunion and calls being heard for disunion:

And we congratulate the country that no Republican member of Congress has uttered or countenanced the threats of disunion so often made by Democratic members, without rebuke and with applause from their political associates; and we denounce those threats of disunion, in case of a popular overthrow of their ascendancy as denying the vital principles of a free government, and as an avowal of contemplated treason, which it is the imperative duty of an indignant people sternly to rebuke and forever silence.

In addition, it stated that “the present Democratic Administration has far exceeded our worst apprehensions, in its measureless subserviency to the exactions of a sectional interest” The platform promised:

That the people justly view with alarm the reckless extravagance which pervades every department of the Federal Government; that a return to rigid economy and accountability is indispensable to arrest the systematic plunder of the public treasury by favored partisans; while the recent startling developments of frauds and corruptions at the Federal metropolis, show that an entire change of administration is imperatively demanded.

A House investigating committee had released a report in June 1860 cataloguing the Buchanan Administration’s frauds, graft, briberies, and campaign abuses. According to historian Michael Holt, the Buchanan Administration “was undoubtedly the most corrupt before the Civil War and one of the most corrupt in American history.” [Holt, Michael, *The Political Crisis of the 1850s*, John Wiley & Sons, Inc., 1978]

The platform also stated:

That appropriations by Congress for river and harbor improvements of a national character, required for the accommodation and security of an existing commerce, are authorized by the Constitution, and justified by the obligation of Government to protect the lives and property of its citizens.

That a railroad to the Pacific Ocean is imperatively demanded by the interests of the whole country; that the federal government ought to render immediate and efficient aid in its construction; and that, as preliminary thereto, a daily overland mail should be promptly established.

In the divided electorate, Lincoln received 1,865,908 votes and 180 electoral college votes, with 152 needed to win. Senator Douglas was the closest competitor in the popular vote with 1,380,202 votes, but he won only 12 electoral votes. In the electoral college vote, Vice President Breckinridge, received the second highest total, 71 reflecting a popular vote of 848,019.

President Buchanan’s strong views on the separation of powers among Federal and State governments had become most in evidence as the political battles intensified over slavery. In response to the election of Abraham Lincoln, southern States began seceding from the Union, starting with South Carolina on December 20, 1860. President Buchanan sought compromise where none was possible as southern State after State followed South Carolina’s example.

In his fourth and final annual message to Congress on December 3, 1860, President Buchanan began:

Throughout the year since our last meeting the country has been eminently prosperous in all its material interests. The general health has been excellent, our harvests have been abundant, and plenty smiles throughout the land. Our

commerce and manufactures have been prosecuted with energy and industry, and have yielded fair and ample returns. In short, no nation in the tide of time has ever presented a spectacle of greater material prosperity than we have done until within a very recent period.

Why is it, then, that discontent now so extensively prevails, and the Union of the States, which is the source of all these blessings, is threatened with destruction?

Professor James M. McPherson, in his history of the Civil War, summarized the President's discussion of the divisive issue in the message:

James Buchanan surprised some of his southern allies with a firm denial of the right of secession. The Union was not "a mere voluntary association of States, to be dissolved at pleasure by any one of the contracting parties," said Buchanan If secession was legitimate, warned the president, the Union became "a rope of sand" and our thirty-three States may resolve themselves into as many petty, jarring, and hostile republics By such a dread catastrophe the hopes of the friends of freedom throughout the world would be destroyed

Despite having reached that conclusion, President Buchanan did not intend to use "coercion" to prevent secession. Had he wished to do so, he would have had little military force to support the attempt and what he had was so widely dispersed around the country that it would not have been able to respond in a timely manner.

As Professor McPherson explained, Republicans and Democrats disagreed on how to resolve the issues in a way that would reunite the country:

Buchanan's message to Congress set the agenda for these efforts. He first blamed the North in general and Republicans in particular for "the incessant and violent agitation of the slavery question" which had now "produced its natural effects" by provoking disunion. Because of Republicans, said the president, "many a matron throughout the South retires at night in dread of what may befall herself and children before morning." Buchanan stopped short of asking the Republican party to dissolve; instead he asked northerners to stop criticizing slavery, repeal their "unconstitutional and obnoxious" personal liberty laws, obey the fugitive slave law, and join with the South to adopt a constitutional amendment protecting slavery in all territories. Unless Yankees proved willing to do these things, said Buchanan, the South would after all "be justified in revolutionary resistance to the Government." As an additional sign of northern good will, Buchanan also advised support for his long-standing effort to acquire Cuba, which would further placate southern fears by adding a large new slave state to the Union.

The reaction, particularly among Republicans, was, as Professor McPherson put it, "readily imagined." [McPherson, James M., *Battle Cry of Freedom: The Civil War Era*, Oxford University Press, 1888]

In addition to the discussion Professor McPherson summarized, President Buchanan noted what he considered a misguided cause of discontent in the South, namely the

election of Abraham Lincoln to be the next President of the United States. The election of anyone to the office, President Buchanan observed, “does not of itself afford just cause for dissolving the Union.” To “justify a resort to revolutionary resistance,” the Federal Government would have to be guilty of “a deliberate, palpable, and dangerous exercise” of powers not permitted by the Constitution, and no such act could have been committed by a man who had not taken office:

Reason, justice, a regard for the Constitution, all require that we shall wait for some overt and dangerous act on the part of the President elect before resorting to such a remedy. It is said, however, that the antecedents of the President-elect have been sufficient to justify the fears of the South that he will attempt to invade their constitutional rights. But are such apprehensions of contingent danger in the future sufficient to justify the immediate destruction of the noblest system of government ever devised by mortals? From the very nature of his office and its high responsibilities he must necessarily be conservative. The stern duty of administering the vast and complicated concerns of this Government affords in itself a guaranty that he will not attempt any violation of a clear constitutional right.

After all, he is no more than the chief executive officer of the Government. His province is not to make but to execute the laws Surely under these circumstances we ought to be restrained from present action by the precept of Him who spake as man never spake, that “sufficient unto the day is the evil thereof.” The day of evil may never come unless we shall rashly bring it upon ourselves.

After completing his analysis of the slavery and secession issue, President Buchanan went through the usual topics of annual messages, including foreign affairs and domestic issues, adding, “It would be a useless repetition to do more than refer with earnest commendation to my former recommendations in favor of the Pacific railroad.”

On his way to Washington for his inauguration, Lincoln traveled from his home in Springfield, Illinois, entirely by train on a 1,900-mile, 13-day roundabout route that took him to Indianapolis, Cincinnati, Columbus, Pittsburgh, Cleveland, Buffalo, Rochester, Albany, New York, Trenton, and Philadelphia. At each stop, he delivered speeches that were intended to reassure northern residents regarding his plans and let southern residents know he was not the evil incarnate they imagined.

The next leg of the trip, Baltimore, was seen as the most dangerous. Southern interests in Maryland and elsewhere were plotting to assassinate the President-elect, with the most likely plan involving action while he transferred between the Philadelphia, Wilmington and Baltimore Railroad depot on President Street and Camden Avenue to the Baltimore and Ohio Railroad’s Camden Street Station. Horses pulled the cars along tracks for the five blocks between the two stations.

By careful planning, the train carrying President-elect Lincoln reached Baltimore around 3:30 a.m. In other cities, his train had arrived to large crowds that forced the Lincoln

party to struggle through the streets to reach their hotel. Now, in the middle of the night, no one was expecting him. The city was quiet. The crowds that the assassins had hoped would provide cover for their act were absent. The horses pulled the cars to the Camden Street Station in routine fashion and without calling attention to the occupant of one of the cars.

The train for Washington left the Camden Street Station at around 4:30 a.m., crossing into Washington at 5:30 a.m., and arriving at the depot at 6:00. Because of the hour and the secrecy maintained during this last leg of the trip, people, whether friend or foe, were not aware that President-elect Lincoln had arrived in the city he had not seen since the inauguration of President Taylor. A friend had a carriage waiting to take the party to Willard's Hotel on Pennsylvania Avenue. [Widmer, Ted, *Lincoln on the Verge: Thirteen Days to Washington*, Simon and Schuster, 2020]

Doris Kearns Goodwin described the inauguration on March 4, 1861:

As the clock struck noon, President Buchanan arrived at the Willard to escort the president-elect to the ceremony. Lincoln, only fifty-two, tall and energetic in his shiny new black suit and stovepipe hat, presented a striking contrast to the short and thickset Buchanan, nearly seventy, who had a sorrowful expression on his aged face. As they moved arm in arm toward the open carriage, the Marine Band played "Hail to the Chief." The carriage made its way up Pennsylvania Avenue, while cheering crowds and hundreds of dignitaries mingled uneasily with the hundreds of troops put in place by General [Winfield] Scott to guard against an attempted assassination. Sharp shooters looked down from windows and rooftops. Cavalry were placed strategically throughout the entire route

As the day brightened, Washington, according to one observer, assume[d] an almost idyllic garb." Though the city "displayed an unfinished aspect" – with the monument to President Washington still only one third of its intended height, the new Capitol dome two years away from completion, and most of the streets unpaved – the numerous trees and gardens were very pleasing, creating the feel of "a large rural village."

The appearance of Lincoln on the square platform constructed out from the east portico of the Capitol was met with loud cheers from more than thirty thousand spectators. Mary sat behind her husband, their three sons beside her. In the front row, along with Lincoln, sat President Buchanan, Senator Douglas, and Chief Justice Taney.

Lincoln's old friend Edward Baker . . . introduced the president-elect. Lincoln made his way to the little table from which he was meant to speak. Noting Lincoln's uncertainty as to where to place his stovepipe hat, Senator Douglas reached over, took the hat, and placed it on his own lap. Then Lincoln began. His clear high voice, trained in the outdoor venues of the Western states, could be heard from the far reaches of the crowd

At the end of the address, Chief Justice Taney walked slowly to the table. The Bible was opened, and Abraham Lincoln was sworn in as the sixteenth President of the United States.

In his Inaugural Address, Lincoln discussed the issues dividing the country, but concluded:

We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

Returning to the Executive Mansion, former President Buchanan took his leave:

As Buchanan bade farewell, he said to Lincoln, “If you are as happy, my dear sir, on entering the house as I am in leaving it and returning home, you are the happiest man in this country. [Goodwin, Doris Kearns, *Team of Rivals: The Political Genius of Abraham Lincoln*, Thorndike Press, 2012]

By the time Abraham Lincoln took office on March 4, 1861, the country had split into two. Only weeks later, on April 12, 1861, a brief battle at Fort Sumter in the South Carolina harbor at Charleston pulled the country into the Civil War.

Historian Agar put President Buchanan in perspective:

Buchanan saw himself, inaccurately, as a politician of rich experience and wisdom. He had been in public service for almost forty-two years and he mistakenly believed that he had been learning all that time When hard-pressed his refuge was irresolution

By and large, the Cabinet was a faithful mirror of the President. Most of it was old and unaware of the perilous mood of the country. None of it, with the exception of [Treasury Secretary Howell] Cobb [of Georgia], was notably able. None of it could provide leadership at Cabinet meetings. If Buchanan went wrong there was no one to help. If he tried to evade decisions there was no one to compel action. It is pathetic to think of this tired, sick man, with his too dignified deportment masking the self-distrust which kept him from delegating power, working till late hours night after night in the White House, poring over a multitude of papers which he insisted on reading but which he failed to understand.

Fergus Bordewich, in his book about the slavery debate, described President Buchanan as “one of the most experienced and least capable men ever to sit in the White House.” Professor Charles A. Beard wrote that, “Rare insight and rare courage were needed, and Buchanan had neither.” Politician and diplomat Robert Strauss, in his biography of Buchanan, partly explained the adverse judgment of history by stating that, “Throughout his term, when a fork appeared in the road, Buchanan managed to take the wrong turn.”

[Bordewich, Fergus M., *America's Great Debate: Henry Clay, Stephen A. Douglas and the Compromise That Preserved the Union*, Simon and Schuster, 2012; Beard, Charles A., *Mr. President: The President in American History 1789-1980*, Julian Messner, A Simon and Schuster Division, 1979; Strauss, Robert, *Worst. President. Ever.: James Buchanan, the POTUS Rating Game, and the Legacy of the Least of the Lesser Presidents*, Lyons Press, Reprint Edition, 2017]

By railroad, former President Buchanan returned to Wheatland. Frustrated by the vitriol aimed at him during the Civil War, he would spend much of the rest of his life attempting to restore his reputation, but without success. He died from respiratory failure on June 1, 1868, at the age of 77.

No one knew it when the former President and incoming President said farewell, but historians would determine that one, Buchanan, had been the worst President in the country's history, while the other, Lincoln, was to be the greatest.

Shifting Ownership

After the failure to secure appropriations in the early 1840s for continuing the Cumberland Road, friends of the road did not give up. In 1846, they tried to pass a bill in the House that would turn the road over to Ohio, Indiana, Illinois, and Missouri, along with an incentive for the States to finish construction. Each State would receive public lands along with the transfer of ownership of the road:

- Ohio: 344,000 acres
- Indiana: 921,000 acres
- Illinois: 1,389,360 acres
- Missouri: 1,331,832

If the States did not complete the road in 8 years, they would forfeit the public land.

Young, in his constitutional history of the road, summarized the outcome:

The general tenor of the debate was to the effect that the original "compact" was binding; but the bill failed. Some said they wished never to hear the words "Cumberland Road" pronounced in the House again. But the following, together with the strict-construction theory, generally determined the matter:

Why, sir, men are behind the times with this old-fashioned road. The spirit of the age is "onward!" Thirty miles an hour on land and one thousand miles a minute on Professor Morse's wires are deemed but ordinary speed.

The House engaged in a lengthy debate on two alternatives: a traditional appropriation bill and the land-substitute bill. At one point, Representative Robert Smith, a Democrat from Illinois and chairman of the Committee on Roads and Canals, addressed his colleagues for "nearly an hour." Speaking on April 6, 1846, he said, "No member in this House was more strenuously opposed to an *extravagant* and *indiscriminate* system of

internal improvements by the General Government than he was.” He would not vote for any bill now before the House “which had not been sanctioned by the fathers of the Constitution, and similar appropriations approved by the great expounders of the Democratic creed – Jefferson, Madison, Jackson, and Van Buren.”

The Cumberland Road proposition, he said, had begun under President Jefferson and continued until the commencement of President Tyler’s term:

With such facts staring him in the face, he must be excused for preferring to adopt the construction put upon the Constitution, and the power of the General Government to make appropriations for this road, by Jefferson and Madison, who acted a conspicuous part in framing that instrument, rather than adopt the construction given to it by the two honorable *young* gentlemen from Alabama, [Messrs. Yancey and Payne.] He believed that those who framed and adopted that Constitution understood full as well the powers that instrument designed Congress should exercise, as those of the present generation and the present day. And that, protecting himself behind the shield constructed by the framers of the Constitution, he should continue to advocate and support all appropriations designed for the completion of this great national work.

(As mentioned previously, Thomas Jefferson was not one of the framers of the Constitution; he was Minister to France at the time of the Constitutional Convention.)

Representative Smith, who was 44 years old, was referring to Representatives William L. Yancey (32 years old) and William W. Payne (39), both Democrats from Alabama. During the debate on April 3, Representative Yancey had denied any obligation to complete the road, given the exhaustion of the two-percent fund. He opposed the bill “on the ground of constitutionality and of expediency.” Representative Payne had read an extract, cited earlier, from Secretary of State Thomas Jefferson’s reply, on February 15, 1791, to President Washington’s request for comments on the constitutionality of the National Bank:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

After reading the excerpt, Representative Payne concluded:

The power to dig a canal, build a road, or improve a river, is not among the enumerated powers. If, then, Congress attempts to do either, we take possession of a boundless field of power, no longer susceptible of any definition.

Representative Smith considered it “extraordinary” that during the years when the Cumberland Road was under construction from Cumberland to Wheeling, the Representatives from the three States had supported it, “time and again,” adding that

“these constitutional objections did not appear to have sprung up in the minds of the Representatives from Virginia against the further construction of this great national thoroughfare, until *after* it had been constructed through that State, and *completed* to Wheeling, on the banks of the Ohio.”

He realized that they attempted to avoid claims of inconsistency by pointing out that the two-percent fund was exhausted. That was, in Representative Smith’s view, only a “pretext”:

Up to April, 1820, the appropriations made for the construction of the Cumberland road through the three States of Maryland, Pennsylvania, and Virginia, amounted to the sum of \$1,698,984; while, during that that same period, the *two per cent. fund* only amounted to \$210,000. Here, then, it would appear that up to the period named, (1820,) the excess of appropriations to the Cumberland road, over and above the two per cent. fund, amounted to the enormous sum of \$1,488,984. And yet (said Mr. S.) no objection was raised that the General Government was exceeding its authority, or going beyond the stipulations of the compact, by making appropriations to an amount exceeding that realized from the two per cent. fund.

Nevertheless, Congress on May 15, 1820, passed legislation to extend the road to the west bank of the Mississippi River between St. Louis and the mouth of the Illinois River. Representative Smith read the preamble to that Act:

Whereas, by the continuation of the Cumberland road from Wheeling, in the State of Virginia, through the States of Ohio, Indiana, and Illinois, *the lands of the United States may become more valuable, &c.*

Here, Representative Smith explained, Congress was admitting that it had the power to extend the road “irrespective of anything contained in the compact, from the effect of which it would prove difficult for the gentlemen to escape.” He mentioned this only to disprove the claim that supporters of the road “were contending for new and extended powers of the General Government to continue these appropriations; and to repel the charge that, in advocating them, they were violating any principle of the Democratic party.”

He then pointed out that during the Jackson and Van Buren Administrations, they took a limited view of the power of Congress, but approved bills appropriating funds for the Cumberland Road:

During General Jackson’s Administration, larger appropriations were made for the completion of the Cumberland road than during any previous or subsequent Administration. And as to him was awarded the fame of checking a reckless and extravagant system of internal improvements; no one could question but what he regarded this road as coming clearly within the constitutional powers of Congress, or he never would have given his sanction to appropriations exceeding \$3,700,000, and, at the very time, too, when all the mighty energies of his

indomitable nature were being exerted to put a stop to all works of internal improvements not strictly of a national character.

Representative Smith read an extract from President Jackson's Maysville Road veto citing two examples during the Jefferson Administration – the Louisiana Purchase and the Cumberland Road – that “have a greater agency in marking the character of the power than any subsequent events.” The extract included President Jackson's observation that the Cumberland Road derived “much weight from the acquiescence and approbation of three of the most powerful of the original members of the Confederacy expressed through their respective Legislatures.”

If, Representative Smith said, he was in error in supporting appropriations for the Cumberland Road, “it was to him sufficient justification that he had been led into that error by the distinguished Democratic Presidents to whose action and writings he had previously referred.”

He explained that in compliance with his duty to himself and his constituents, he had reported a bill appropriating \$400,000 for continuation of work on the road. Shortly afterwards, Representative Caleb B. Smith, an Indiana Whig, had reported the bill granting public lands to the States as incentive for them to complete the road. As chairman of the committee, Representative Robert Smith had written to every member of the House from those States to secure their opinion, and for the most part they favored the public lands version of the bill:

These strong and nearly unanimous expressions from three States most deeply interested in this great national work, added to the undeniable fact that all attempts to procure a money appropriation had entirely failed for the last eight years, he did not feel himself at liberty to disregard.

Therefore, he had released the lands bill, but with the understanding that it would be considered only if the appropriation bill failed. “In pursuing this course, he was doing what he conscientiously believed was for the best interests of his constituents, and the West in general.”

On April 7, the House voted 78 to 108 to reject the lands bill and 72 to 106 to reject the appropriation bill. “So the bill was *rejected*,” as the *Globe* summed up the outcome.

Although funding was at an end, Congress was not finished with the Cumberland Road, as Young described. On March 31, 1848, the Indiana legislature passed a resolution accusing Congress of having failed to fulfil its contract, “and praying that the eastern part of the road to the state of Indiana might be transferred together with materials, tools, etc., to the state, that it might authorize a private company to finish it.” The resolution closed:

Provided, however, that the United States may resume the ownership and control of said Road at any time by paying to the corporations the cost of constructing the same.

In response, Congress passed *An Act to surrender to the State of Indiana the Cumberland Road in said State*. President Polk signed it on August 11, 1848:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the part of the Cumberland road as lies within the State of Indiana, and all the interest of the United States in the same, together with all the timber, stone, and other materials belonging to the United States, and procured for the purpose of being used in the construction of said road, and all the rights and privileges of every kind belonging to the United States as connected with said road in said State, be, and the same are hereby, transferred and surrendered to the said State of Indiana.

Lee Burns, in his article about the road in Indiana, wrote that:

But the state would have none of it. The canals and railroads that it had built in a gigantic and ill considered scheme of internal improvements had resulted in financial disaster, and the state had begun to turn them over to such private companies as would agree to complete them and keep them in operation.

And so control of the National road through Hancock, Marion, Hendricks and Putnam Counties was granted in 1849 to the Central Plank Road Company which covered the road with oak planks and put up a series of toll gates. In Indianapolis a toll gate was built at the bridge and another just east of town. This was considered by the citizens as taking an unfair advantage of the franchise and finally the eastern gate was removed, after the town council had agreed that the company should not be required to keep Washington street in repair. After a time the planks began to decay and the road was graveled

The plank road craze in the United States began in 1846 when the first such road opened in New York (Syracuse to Oneida Lake). Thousands of miles of plank road would be built as toll roads. However, as Albert C. Rose explained in *Historic American Roads*, this craze did not last long:

In spite of the reluctance of the engineering profession to endorse any material that by its nature was transient in character, this new road surfacing struck the popular fancy and during the following decade thousands of miles were built in many States until the disillusioned public began to appreciate the fact that the life of any road is limited by the lasting qualities of the material of which it is built. It took 10 years to demonstrate this axiom – just long enough for the wooden planks to rot away and wear out.

Owners of the roads could not afford to replace the planks based on toll collection in a time when railroads were a superior form of surface transportation.

Burns continued:

Through Wayne County the road was taken over by the Wayne County Turnpike Company and was operated by it as a toll road for over forty years when it was

finally purchased by the townships through which it passed and made a free gravel road, and in Henry county the road was operated for many years by a private company.

The entire road in Indiana was soon paralleled by a railroad.

In response to a similar resolution from Illinois, Congress approved a bill that President Pierce signed on May 9, 1856, transferring the Cumberland Road to that State.

On March 27, 1877, Ohio asked permission to stop collecting toll with the consent of the counties the road passed through. Maryland adopted a similar resolution. By Act of January 30, 1879, Congress granted authority to Maryland, with similar consent for Ohio by Act of February 26, 1879.

Young summarized:

The surrender of the road to the states was but the concrete expression of the great democratic wave which swept over the United States during the thirties and forties. Every state admitted, beginning with Ohio, had entered into a compact with the United States by which the latter reserved 2 per cent. of land sales for the construction of a road to the state. In 1836, when Arkansas entered the Union, she was given the entire 5 per cent to expend to suit herself, and in 1841 the 2 per cent. reservation for Alabama and Mississippi was surrendered to those states.

Reasons have already been given for this surrender. The main ones were (1) a lack of jurisdictional power in the United States to levy tolls and police the road; (2) a desire on the part of both the states and the United States to preserve the road from destruction. The acts surrendering the road east of the Ohio declared the consent given only "during the pleasure of Congress." No time is mentioned in the Ohio act of 1831, but in 1879 the United States disclaimed all obligations in the future; in Indiana and Illinois the surrender was complete and unconditional. In the original acts of surrender, 1831-35, there was a recognition of either a proprietary or a jurisdiction interest, or both, in the United States as follows: (1) something was surrendered; (2) surrender was made by "compacts" which regulated the number of toll-gates and the rates of toll; (3) provision was made for the United States to resume its proprietary or jurisdictional interest at pleasure.

In the Supreme Court

Searight v. Stokes

In the 1830s, Congress had passed Acts consenting to Pennsylvania's law "for the preservation and repair of the Cumberland road." It called for the appointment of commissioners to build toll-houses and toll-gates, but included several exemptions from the tolls, including "any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States or to any of the states composing this union." By an Act of July 3, 1832, Congress agreed to the State takeover laws of Pennsylvania as well as Maryland.

Pennsylvania, however, felt that it was not getting as much toll revenue as it should.

By an Act of June 13, 1836, the State provided that wagons carrying goods, cannon, or military stores of the United States would be exempt from tolls only to the proportional amount of such goods they carried, but subject to toll for the remainder, "and that in all cases of wagons, carriages, stages, or other modes of conveyance, carrying the United States' mail, with passengers or goods, such wagon, stage, or other mode of conveyance, shall pay half toll upon such modes of conveyance."

The National Road Stage Line operated by William B. Stokes and Lucius W. Stockton of Maryland was one of the companies subject to the new toll law. (Stockton was cited earlier regarding repairs he had made to the road without formal permission to do so.) In accordance with agreements with the Postmaster General, the company's stages carried the United States mail as well as passengers and their baggage. The company refused to pay the proportional toll for its non-mail activities.

In *The Old Pike*, Thomas B. Searight described the first encounter:

We recall but one instance of a refusal to pay toll for passing over the National Road, and that was a remarkable one. It grew out of a misconception of the scope of the act of Congress, providing for the exemption from toll of carriages conveying the United States mails. The National Road Stage Company, commonly called the "Old Line," of which Lucius W. Stockton was the controlling spirit, was a contractor for carrying the mails, and conceived the idea that by placing a mail pouch in every one of its passenger coaches it could evade the payment of toll. Stage companies did not pay toll to the collectors at the gates, like ordinary travelers, but at stated periods to the Road Commissioner.

At the time referred to, William Searight, father of the writer, was the commissioner in charge of the entire line of the road through the state of Pennsylvania, and it was fifty years ago. Upon presenting his account to Mr. Stockton, who lived at Uniontown, for accumulated tolls, that gentleman refused payment on the ground that all his coaches carried the mail, and were therefore exempt from toll. The commissioner was of opinion that the act of Congress could not be justly construed to cover so broad a claim, and notified Mr. Stockton that if the toll was not paid the gates would be closed against his coaches. Mr. Stockton was a resolute as well as an enterprising man, and persisted in his position, whereupon an order was given to close the gates against the passage of his coaches until the legal toll was paid.

The writer was present, though a boy, at an execution of this order at the gate five miles west of Uniontown. It was in the morning. The coaches came along at the usual time and the gates were securely closed against them. The commissioner superintended the act in person, and a large number of people from the neighborhood attended to witness the scene, anticipating tumult and violence, as to which they were happily disappointed. The drivers accepted the situation with good nature, but the passengers, impatient to proceed, after learning the cause of

the halt, paid the toll, whereupon the gates were thrown open and the coaches sped on. For a considerable time after this occurrence an agent was placed on the coaches to pay the toll at the gates.

Mr. Stockton instituted prosecutions against the commissioner for obstructing the passage of the United States mails, which were not pressed to trial, but the main contention was carried to the Supreme Court of the United States for adjudication.

Commissioner Searight took the company to court. State law had exempted property of the United States, but the issue was whether tolls could be charged on a proportional basis for carriages carrying passengers and private property as well as Federal property such as the U.S. mail. On November 29, 1842, the Circuit Court of the United States for the western district of Pennsylvania ruled in favor of the defendants, Stokes and Stockton.

Searight v. Stokes, 44 U.S. 151 (1845), reached the Supreme Court, which issued its opinion on January 1, 1845. Chief Justice Taney, writing the opinion for the majority, explained that Pennsylvania, under Federal law, could change the toll charges without the consent of Congress, as long as the toll collected was never higher than the amount needed for preservation of the road.

Taney went through the history of the road, and the legislation transferring responsibility to the State, before summarizing what the case was and what it was not:

And we are now to inquire whether this half-toll can be imposed upon carriages carrying the mail under the compact between the United States and Pennsylvania.

It will be seen from this statement, that the constitutional power of the general government to construct this road is not involved in the case before us; nor is this court called upon to express any opinion upon that subject; nor to inquire what were the rights of the United States in the road previous to compacts herein before mentioned. The road had in fact been made at the expense of the general government. It was the great line of connection between the seat of government and safe channel for the conveyance of the mails, and enabling the government thereby to communicate more promptly with its numerous officers and agents in that part of the United States west of the Alleghany mountains. The object of the compacts was to preserve the road for the purposes for which it had been made. The right of the several states to enter into these agreements will hardly be questioned by any one. A State may undoubtedly grant to an individual or a corporation a right of way through its territory upon such terms and conditions as it thinks proper; and we see no reason why it may not deal in like manner with the United States, when the latter have the power to enter into a contract. Neither do we see any just ground for questioning the power of Congress. The Constitution gives it the power to establish post-offices and post-roads; and charged, as it thus is, with the transportation of the mails, it would hardly have performed its duty to the country, if it had suffered this important line of communication to fall into utter ruin, and sought out, as it must have done, some circuitous or tardy and

difficult route, when by the immediate payment of an equivalent it obtained in perpetuity the means of performing efficiently a great public duty, which the Constitution has imposed upon the general government. Large as the sum was which it paid for repairs, it was evidently a wise economy to make the expenditure. It secured this convenient and important road for its mails, where the cost of transporting them is comparatively moderate, instead of being compelled to incur a far heavier annual expense, as they must have done, if, by the destruction of this road, they had been forced upon routes more circuitous or difficult, when much higher charges must have been demanded by the contractors.

Having established the basis for the case, Taney wrote that the Act of March 3, 1835, was due "great consideration" because it allowed the States to take possession of the road and charge tolls for its preservation, subject to specified conditions:

By so doing they assented to all the provisions contained in this act of Congress; and one of them is an express condition, that the United States not thereafter be subject to any expense in relation to the road. Yet under the argument, the expenses of the road are to be defrayed out of the tolls collected upon it. And if the mails in Pennsylvania and Maryland may be charged, it will be found, that instead of the entire exemption, for which the United States so expressly stipulated, and to which Pennsylvania agreed, a very large proportion of the expenses of repair will be annually thrown upon them. We do not think that either party could have intended, when the contract was made, to burden the United States in this indirect way for the cost of repairs. So far as the general government is concerned, it might as well be paid directly from the Treasury. For nobody, we suppose, will doubt that this toll, although in form it is paid by the contractors, is in fact paid by the Post-office Department. It is not a contingent expense, which may or may not be incurred, and about which a contractor may speculate; but a certain and fixed amount, for which he must provide, and which, therefore, in his bid for the contract, he must add to the sum he would be otherwise willing to take. It is of no consequence to the United States whether charges for repairs are cast upon it through its Treasury or Post-office Department. In either case it is not free from expense in relation to the road, according to the compact upon which it was surrendered to and accepted by the states.

The general government had "unquestionably a property in the mails."

The State law referred to wagons "laden" with the property of the United States:

Nor can the word laden be construed to mean fully laden, for that would in effect destroy the whole value of the exemption, and compel the United States to pay a toll even on its military stores and other property, unless every wagon or carriage employed in transporting it was as heavily laden as it could conveniently bear. We think that a carriage, whenever it is carrying the mail, is laden with the property of the United States within the true meaning of the compact: and that the act of Congress of which we have spoken, and to which the state assented, must

be taken in connection with the state law of 1831 in expounding this agreement. Consequently, the half-toll imposed by the act of 1836 cannot be recovered.

Taney contrasted the situation with the case where the State of Pennsylvania could have built the road with its own funds:

If the state had made this road herself, and had not entered into any compact upon the subject with the United States, she might undoubtedly have erected toll-gates thereon, and if the United States afterwards adopted it as a post-road, the carriages engaged in their service in transporting the mail, or otherwise, would have been liable to pay the same charges that were imposed by the state on other vehicles of the same kind. And as any rights which the United States might be supposed to have acquired in this road have been surrendered to the state, the power of the latter is as extensive in collecting toll as if the road had been made by herself, except in so far as she is restricted by her compact; and that compact does nothing more than exempt the carriages laden with the property of the United States, and the persons and baggage of those who are engaged in their service. Toll may therefore be imposed upon every thing else in any manner passing over the road; restricting, however, the application of the money collected to the repair of the road, and to the salaries and compensation of the persons employed by the state in that duty.

One of the arguments against the toll charge was that if it were upheld, mail contractors would be able “to drive every other line of stages from the road, by dividing the mail-bags among a multitude of carriages, each of which would be entitled to pass toll free, while the rival carriages would be compelled to pay it.” The mail contractors would thereby have a monopoly throughout the length of the road, which would be “greatly injurious to the public, by lessening that disposition to accommodate which competition is sure to produce, and enhancing the cost of travelling beyond the limits of a fair compensation.”

Taney dismissed this argument because the United States “cannot claim an exemption for more carriages than are necessary for the safe, speedy, and convenient conveyance of the mail.” If contractors were to spread the mail among carriages to avoid tolls, they would be in violation of the compact:

The postmaster-general has unquestionably the right to designate not only the character and description of the vehicle in which the mail is to be carried, but also the number of carriages to be employed on every post-road. And it can scarcely, we think, be supposed, that any one filling that high office, and acting on behalf of the United States, would suffer the true spirit and meaning of the contract with the state to be violated or evaded by any contractor acting under the authority of his department.

If a contractor, nevertheless, tried to avoid tolls by spreading the mail among far more carriages than necessary, “the contract, according to its true construction, could be enforced by the state in the courts of justice; and every carriage beyond the number

reasonably sufficient for the safe, speedy, and convenient transportation of the mail would be liable to the toll imposed upon similar vehicles owned by other individuals.

The Supreme Court, therefore, upheld the opinion of the Court of Claims in favor of the defendants, Stokes and Stockton.

Neil, Moore & Co. v The State of Ohio

The State of Ohio thought it also was not receiving the toll revenue it was due for preservation of the road. Initially, State law enacted in 1831 exempted mail stages from paying tolls. However, by An Act of February 6, 1837, the State exempted only one daily stage, coach, or other vehicle, "and no more," belonging to any contractor carrying the mail. Any other vehicles would pay the toll. "But if the postmaster-general shall order the mail to be divided, and carried in two or more stages, coaches, or vehicles, in any one direction daily, then in such case the coaches or vehicles in which mails shall actually be carried, shall pass free of toll; but on each passenger transported in any such additional stage, coach, or vehicle, there shall be charged and collected at each gate, three cents."

By Act of March 19, 1838, the legislature granted authority to the Board of Public Works to revise the toll "to be paid by persons passing on or using the National road in Ohio, and so to modify the same, from time to time, as to raise and collect, in the most equal manner, the sum necessary to defray the expenses incident to the preservation and repair of said road." The board changed the toll to 10 cents per passenger at each toll-gate.

In October 1842, the board as plaintiff brought suit against Neil, Moore & Co., a mail contractor, in the Court of Common Pleas, in Franklin County. A statement of facts agreed to by both parties stated:

The plaintiff claims to recover for tolls on passengers carried upon the National road, in Ohio, in coaches belonging to the defendants, other than and besides one daily stage-coach, carrying the mail of the United States; which said coach, with the horses, passengers, and every thing else pertaining to it, was permitted to pass toll free. The order of the Board of Public Works . . . was made in due form, at the date thereof, and is to be admitted in evidence. The passengers upon whom toll is sought to be recovered, were carried by the defendants, as above mentioned, between the first days of April and October, A.D. 1842. The defendants were contractors for carrying the mail of the United States upon said road, and said passengers were all carried in coaches in which a part of said mail was carried at the same time; the mail being thus carried in more than one coach, pursuant to orders from the postmaster-general; one coach, containing a part of the mail, and the passengers, and baggage, and every thing on it, being, at the same time, permitted to pass toll free, as above stated.

The parties agreed that the toll was equal to what was required to keep the road in repair, but it was not intended by "this admission to preclude the defendants from objecting to

the validity or legality of said charge of toll upon passengers, upon any ground they may think proper to take in the argument”:

It is agreed by the parties that the whole number of passengers charged with toll at all the gates, between the first day of April and July, A.D. 1842, was ten thousand seven hundred and fifty-six, and that the whole number chargeable between the first day of July and October, A.D. 1842, was twelve thousand six hundred and seventeen.

In all, the Board of Public Works calculated that it was owed tolls totaling \$2337.08, plus interest. The Court of Common Pleas found in favor of the plaintiffs, calculating total damages of \$2,438.25.

Neil, Moore & Company appealed to the Supreme Court of Ohio, which affirmed the lower court’s finding in December 1843.

When the case arrived in the U.S. Supreme Court, Chief Justice Taney again wrote the opinion for the majority. In his opinion on *Neil, Moore & Co. v. State of Ohio*, 44 U.S. 3 How. 720 720 (1845), he noted that the Supreme Court had in the same term considered the similar case in Pennsylvania. After summarizing the case, he wrote of the agreements on toll charges:

At the time this compact was made, it was well known that the mail was always transported by contractors, and that whenever it was conveyed in carriages, the vehicles belonged to them, and were their own private property, and not the property of the United States. It was equally well known that upon this road, as well as many others, the postmaster-general, in his contracts, uniformly required that the mail should be carried in a stage or coach capable of accommodating a certain number of passengers, the presence of the passengers being regarded as adding to the safety of the mail, and superseding the necessity of any other guard.

The State was well aware of these facts when in 1831 it exempted carriages carrying the mail from the toll:

The reason for this exemption is evident; for a toll charged upon the carriages of the contractor would, in effect, be a charge upon the Post-office Department, since the contractor would be obliged to make provision for this expense when bidding for the contract, and regulate his bid so as to cover it.

In the proposition made by Ohio, nothing was said of a toll on the passengers in a carriage of any kind, but the charge is made upon the carriage itself, according to its description, and the number of horses, without any regard to the number of persons that may be travelling in it; and it is evident that it was at that time supposed that the rates specified and agreed on would prove sufficient to keep the road in repair, and that the United States would always thereafter have the free use of it, for mail-carriages, of the usual kind, without any burden upon them, direct or indirect.

If the revenue collected had been sufficient to maintain the road, no one would have thought of charging tolls on each passenger in a mail stage, “or that the specified charges upon the carriages could have been reduced, and the deficiency supplied by a toll upon persons traveling in the carriages which conveyed the mail.”

In *Searight v. Stokes* and other opinions, the court had found that the case turned on “the relation in which the parties stood to one another, as well as to the subject-matter of the contract, and the object which the high contracting parties intended to attain; and we must expound it upon the principles of justice, so as to accomplish intention, by a narrow and literal interpretation of its words.”

First, none of the cost of preserving the National Road was to be levied on the United States, “but was to be obtained altogether from other sources; and that the relative position and privileges of the mail-coaches in regard to tolls, as prescribed in the law, were to be always maintained, unless a deficiency or superabundance of revenue should render it necessary to increase or diminish the rates fixed in the law.” Otherwise, the tolls set in State law, and consented to by Congress, “would be nugatory and without object.” At the same time, “two sovereignties were contracting with each other by means of legislative action,” and the State law and congressional assent constituted the “compact between them, so far as their respective rights were concerned.”

Based on these considerations, Chief Justice Taney summarized:

The law of the state, and the order of its Board of Public Works, impose a toll upon every one travelling in the mail-stage, while the passengers in every other vehicle are allowed to go free. If this can be done, it is manifest that the United States will derive no benefit from the compact, and so far from enjoying the privilege for which they stipulated, and for which they paid so heavily in the construction of the road, a large portion of the burden of repairs will be thrown upon them.

The difference could be seen by comparing the tolls on stagecoaches not carrying the mail and similar stagecoaches carrying it:

According to the rates contained in the law of which we are speaking, a four-wheel carriage, drawn by four horses, pays at each gate thirty-one and a quarter cents, and if it is not conveying the mail, it pays nothing on its passengers. This sum is therefore the whole amount of the toll to which it is liable. Now the mails on this road have, we understand, been always transported in coaches of the above description, and although under the order of the Board of Public Works no toll is charged directly upon the carriage, yet every passenger must pay ten cents at each gate, so that the carriage of a mail-contractor, containing six passengers, pays nearly double as much as a like carriage owned by any one else with the same. And what still more strongly marks the disadvantages to which the United States are subjected by this order of the board, these passengers may be persons in the service of the United States, passing along the road in the execution of some public duty, for the order makes no exceptions in their favour.

Although the toll is on passengers, the contractor pays the toll, reducing his profit, “and when thus levelled exclusively at passengers in the mail-stage, it accomplishes indirectly what evidently cannot be done directly by a toll upon the carriage, and in its consequences must seriously affect the interests of the United States,” the next time bidding for the contract is advertised. Moreover, if this form of toll were sustained, “the mischief may not stop here.” The States through which the National Road passes could “graduate the tolls as to drive all passengers from the mail-stages into other lines, and by that means compel the United States, contrary to their wishes, and contrary to the public interest, to transport the mails in vehicles in which no passenger would travel.”

Nevertheless, the court did “mean to deny the right of the state to impose a toll upon passengers in the mail-stages, provided, the power is exercised, in a manner and upon principles, consistent with the spirit and meaning of the argument in which the road was transferred to the care of the states.” In *Searight v. Stokes*, the court had “already said that such a toll may be lawfully collected.” Because that case had not involved a toll on passengers, the court’s opinion had not addressed the subject. The key was the true meaning of the compact:

The carriages carrying the mail, with their passengers, travelling in the known and customary manner, were to pass toll free, as well as other vehicles laden with the property of the United States and the persons employed in their service, as mentioned in the proviso hereinbefore recited; and the road was to be kept in repair by the revenue derived from the tolls specified in the Ohio law, according to the rates there set forth, provided they should prove to be sufficient for the purpose. No toll was at that time proposed upon passengers in any vehicle, and passengers in the mail-stage therefore had no peculiar privilege in going free, and merely passed along the road upon the same terms with those who were travelling in other carriages. And as the compact contains no stipulation for the exemption of travellers in the mail-stages, the general government can demand no advantages in their behalf, which are not extended to passengers in other vehicles. But they have a right to insist that the equality upon this subject, which the law of Ohio originally proposed, shall still be maintained; that the privilege and advantages intended to be secured to the carriages conveying the mail, over those granted to other vehicles, shall be preserved in substance and reality as well as in form; and that the passengers in the mail-stages shall not be selected and set apart, as the especial objects upon which burdens are to be laid, and to which travellers in other carriages are not to be subjected.

When the State realized that the original toll charges were insufficient to maintain the road, it had several choices to increase revenue, including leaving the original tolls in place while supplementing them with tolls on passengers:

And if instead of selecting the persons travelling in the mail-coaches, and laying the burden exclusively upon them, all passengers in vehicles of any kind had been equally charged, the real and substantial advantages and privileges to which the United States are entitled under the agreement would have been preserved, and the quality in relation to passengers originally existing between the mail coaches

and other carriages would not have been disturbed. And it is this manner only, in our judgment, and as a toll in addition to that specifically staged in the contract, and imposed equally upon passengers in every description of vehicle, that persons traveling in the mail-stages can be lawfully charged, without first obtaining the assent of Congress.

Ohio, undoubtedly, had the right to let the mail-stages pass without toll, but “if it thinks proper, to revoke it, since the exemption was a mere voluntary act, founded on no valuable consideration, but growing out of what was then supposed to be a just and liberal policy, which the state could afford to exercise; which it had the right to change whenever it was deemed necessary to do so.” However, the United States, by building the road, had contributed “a full and valuable consideration . . . for the privileges reserved to them”:

And this being the case, the section in question cannot by any sound rule of construction be regarded as inconsistent with the contract contained in another part of the same law, and as placing the rights secured to one party entirely at the discretion and the control of the other. The reservations of power to the state, evidently relate to subjects in which the general government had no separate interest; and they would have been altogether unnecessary and useless if the state had not considered the preceding part of the law as the proffer of a compact which was to be obligatory upon it, if assented to by Congress.

Chief Justice Taney had one concern. The 1837 State law included a provision that “would appear to distinguish between the mail-stages, in relation to toll, where more than one mail passed along the road on the same day.” The Postmaster General has the absolute authority to determine how many stagecoaches should be dispatched with the mail each day, and the hours of transportation. His decisions cannot be controlled by a State or the courts:

And in the case of *Searight v. Stokes and others*, when the court speak of abuses by the contractors in the number of carriages employed, and of the right of the court to enforce the compact, it will be seen by a reference to the opinion, that it is confined to cases where the mail-bags, directed to leave the post-office at the same time, are unnecessarily divided among a number of carriages in order to evade the payment of toll; and the opinion expressed on that occasion by the court does not apply to stages leaving the post-office with mails at different hours, in obedience to the orders of the department. In the latter case it is immaterial whether the mails are light or heavy. The postmaster-general is, upon this subject, the proper and only judge of what the public interest and convenience requires, and his decision cannot be questioned by the courts.

The State law appeared to have been included to guard against contractor abuses, rather than to interfere with the Postmaster General’s powers:

And in regard to the toll imposed, as hereinbefore mentioned, if it is necessary for the support of the road, it is in the power of the parties to the compact to modify it

at their pleasure, and to give the state the power it has exercised. But according to the terms of the contract, as it was originally made, and still stands, the toll upon passengers in the mail-stages, laid in the manner hereinbefore stated, cannot lawfully be demanded, and the judgment of the state court must therefore be reversed.

Achison v. Huddleson

Maryland experienced a similar need for additional toll revenue to keep its portion of the Cumberland Road in repair. The original 1832 Maryland law, subject to congressional assent, provided:

That no tolls shall be received or collected for the passage of any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States, or to any of the States composing this Union.

Congress consented in the Act of July 3, 1832.

When toll revenue was insufficient for preservation of the road, the State of Maryland, by an Act of March 10, 1843, imposed a toll of 4 cents for each passenger in the mail coaches for every 10 miles of travel on the road “and so in proportion for every greater or less distance, which shall be taken and received in lieu of the tolls now established by law on all coaches or stages with four horses passing over said road, and which shall be collected, paid out, and expended as other tolls on said road are collected, paid out and expended, under existing laws.”

The mail contractor was to provide, under oath, on the first Monday of every month “to the gate-keeper at number one, a list, showing the number of passengers transported over said road in their respective coaches, for the month next preceding the time when said list is so returned.” If the contractor did not provide the list, the gate-keeper at number one was “to demand of and receive from, such proprietor or proprietors so failing, the sum of one dollar for each and every stage-coach passing over said road its entire length.”

Over the years, the mail had been carried in the four-horse post-coaches of Stockton, Falls and Company, under contract with the Postmaster-General. The stage company did not comply with the law.

Therefore, Jonathan Huddleson, superintendent of the Maryland section of the Cumberland Road, became plaintiff in a suit against Stockton, Falls, Moore, and Achison, the formal name of the stage company. The company contended that the recent law violated the compact, established in the earlier law, between the State and the United States. The State argued that the case differed from the earlier cases in Pennsylvania and Ohio and was not in violation of the earlier compact.

After hearing the case, the County Court of Alleghany County found for the Huddleson in support of the State law. The Court of Appeals of Maryland affirmed the lower court’s decision.

Achison, as the company's representative, took the case to the U.S. Supreme Court.

In *Achison v. Huddleson*, 53 U.S. (12 How.) 293 (1852), Associate Justice Benjamin R. Curtis wrote the court's opinion released on February 18, 1852. (Appointed by President Fillmore, Curtis – the first Justice who received a degree from a law school – served on the court only from 1851 to 1857. Along with one other Associate Justice, he is known for his vigorous dissent to every finding in Chief Justice Taney's opinion in *Dred Scott v. Sanford*.)

Noting the similarities to *Searight v. Stokes* and *Neil, Moore & Co. v. the State of Ohio*, Curtis found that the finding in *Neil, Moore* applied to the original act of Maryland in accepting, subject to congressional consent, the road. The question, therefore, was whether the second State law complied with that compact among the parties.

The earlier State law imposed a toll on all vehicles on the road except coaches carrying the U.S. mail. Curtis wrote, "And, inasmuch as coaches conveying the mail were not subject to any toll, there was by law a discrimination in favor of mail-coaches, their proprietors bearing none of the burden of supporting the road, while the proprietors of other four-horse coaches did bear a part of that burden." The Act of March 10, 1843, imposed a 4-cent toll on each passenger in a mail coach passing between each toll-gate, "which shall be taken and received in lieu of the tolls now established by law on all coaches or stages with four horses passing over said road, and which shall be collected, paid out, and expended, as other tolls on said road are collected, paid out, and expended, under existing laws."

The case was based on the last part of the law, requiring the company to pay \$1 per coach for failing to provide a list of the number of passengers to the gate-keeper. This provision of the law destroyed the discrimination in the original law in favor of the proprietors of mail coaches:

It was held in both the former decisions, that the stipulation in the compact, that the United States should not thereafter be subject to any expense to maintain the road, was inconsistent with the imposition of a tax upon the contractors for carrying the mail in four-horse coaches, because the United States, requiring the mail to be so carried, would thus indirectly be made, through the enhancement of the price for this service, to bear a part of that burden.

The law, therefore, imposed a tax on the United States, through the contractors, for support of the road.

Huddleson argued that "it is a tax upon the passengers, and not within the former decision. But we do not so consider it." It is true that if the mail proprietor did not carry passengers, he would not have to pay any toll. "But the regulations of the Post-Office Department require him to take passengers for the security of the mail." In fact, the State would not have imposed the toll unless the legislators believed the mail coaches would carry passengers:

The real effect and meaning of the law is, therefore, to impose a tax on the proprietor of a four-horse coach which carries the mail, making the amount of that tax depend on the number of passengers carried. Now, the objection is not to the amount, but to the existence of the tax. Not having the power to impose any tax, it is no answer to say, its amount is regulated by the number of passengers.

The defendants argued that the \$1 charge per coach was not a toll under the third section of the law, but a penalty for not complying with the second section:

We think it more properly a commutation as to amount, for the tolls payable under the first section. It fixes their amount by operation of law, and without regard to the number of passengers carried; and is certainly subject to difficulties quite as great as would attend a demand for the tolls under the first section.

Our opinion is, that, by reason of the compact between the United States and the State of Maryland, the tolls sued for could not be legally demanded, and that the decision of the Court of Appeals was erroneous and must be reversed.

The opinion reversed the Court of Appeals' opinion, "with costs." The case was ordered back to the Court of Appeals "in order that such further proceedings may be had therein, in conformity to the opinion of this court, as to law and just may appertain."

Indiana v. United States

On October 23, 1889, the State of Indiana went into the Court of Claims to file suit against the United States to recover \$412,184.97 due, the suit alleged, from the sale of public lands in the State.

As stated earlier, the Enabling Act of April 19, 1816, that admitted Indiana to the Union provided:

That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of Congress.

Similar provisions had been included in Enabling Acts for the other Cumberland Road States as well as Alabama (1819) and Missouri (1820). As described earlier, legislation beginning in 1820 provided for use of the two-percent fund set aside for road or roads leading to the State for extension of the Cumberland Road west from Wheeling. The road was never completed to macadam standards in Indiana by the time Congress authorized the final significant funds for the work on May 25, 1838. The road was gradually turned over to the States.

An Act of September 4, 1841, provided that 10 percent of revenue from public land sales in the States of Alabama, Arkansas, Illinois, Indiana, Louisiana, Michigan, Mississippi, Missouri, and Ohio shall be turned over to the States “over and above what each of the said States is entitled to by the terms of the compacts entered into between them and the United States upon their admission to the Union”:

Provided, That the sum so allowed to the said States, respectively, shall be in no wise affected or diminished on account of any sums which have been heretofore, or shall be hereafter, applied to the construction or continuance of the Cumberland road, but that the disbursements for the said road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said States.

The funds going to Mississippi were to be used for a railroad from Brandon to the Alabama border, while the Alabama funds were for internal improvements of its choice.

By an Act of March 2, 1855, Congress called on the Commissioner of the General Land office to determine what sum was owed to Alabama under its Enabling Act for admission to the Union, and to include several reservations under treaties with several Indian Tribes, “and to pay to the said State five per centum thereon, as in case of other sales.”

Two years later, Congress approved an Act of March 3, 1857 to settle accounts with Mississippi “and other States” based on the same principles as the Act of March 2, 1855. The 1857 Act also called for a similar accounting for “each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.”

In accordance with the 1857 Act, the commissioner of the General Land Office stated an account for Indiana on December 4, 1872:

Balance due on December 31, 1856, on account of the three percent fund:	\$47.12
Amount of net proceeds of sales through December 31, 1856:	\$413,568.61
Amount of five percent on the cash value, at \$1.25 per acre in reservations:	<u>\$6,333.73</u>
	\$419,949.46

The commissioner also calculated that Congress had appropriated \$2,502, 900.45 for the laying out and making the Cumberland Road in Ohio, Indiana, and Illinois from 1818 to 1837 under acts requiring the Treasury to be reimbursed from the two-percent fund. In addition, \$1,555,000 had been appropriated, to be reimbursed from the two-percent fund, for the road in those States and Missouri. From these sums, the commissioner concluded that the sum appropriated for the Cumberland Road in those States was far more than the accrued amounts reserved from land sales for them. As a result, the only amounts due to Indiana were \$47.12 on the three-percent account and \$6,333.73 for Indian reservations.

These amounts were later verified by the Comptroller of the Treasury on February 5, 1874. Therefore, a sum of \$6,380.85 was offered to the State of Indiana, which did not accept the amount as a final settlement of its demands.

On October 17, 1889, Indiana formally demanded that the commissioner state an account in accordance with the Act of March 3, 1857. Without a change in the commissioner's position, the State pursued the case in the courts. The State filed a petition in the Court of Claims on October 23, 1889, against the United States to recover \$412,184.97. After the Court of Claims dismissed the petition, Indiana appealed to the Supreme Court.

The Supreme Court heard *Indiana v. United States*, 148 U.S. 148 (1893), on January 13, 1893. Justice Horace Gray rendered the court's opinion on March 13, 1893. President Chester Arthur, the Vice President who became President after the assassination of President James A. Garfield, had appointed Gray, a Boston native, to the Supreme Court in 1882, and he served until his death on September 15, 1902. He was the first Supreme Court Justice to hire a clerk, whom he paid out of his own salary.

He found that the Enabling Act for Indiana statehood "did not define the termini of the road or roads to be built, or bind Congress to complete any road, or require the two per cent of the proceeds of the sales of lands in Indiana to be expended within the State." The only obligation was to apply the two-percent fund "to the making of a road or roads leading to the said State, under the direction of Congress." Congress had the right to decide "on what part of the road leading to Indiana this fund should be expended; and Congress had the right to treat the road as a whole, constructed for the benefit of all the States through which it passed."

Whether the compact was a contract or a trust, "the contract has been performed, or the trust executed, by applying the fund in question to the making of a road 'leading to the said State' of Indiana." Based on the accounts of the commissioner of the General Land Office, "the sums appropriated to the construction of the Cumberland road leading to the State of Indiana greatly exceeded the whole amount of the two per cent fund from sales of lands in the State; and that, therefore, in the absence of special legislation upon the subject, nothing was payable to the State of Indiana on account of this fund."

Congress, which had a general authority to apply the two-percent fund to any part of the road, exercised this authority "honestly and fairly." That being the case, "it did not appear . . . what part of the expenditures upon the road was properly chargeable to 'making a road to the said State,' or what proportion of such expenditures for making a road to the State of Indiana was properly chargeable to the States of Ohio, Illinois, and Missouri, is wholly immaterial; and it was so treated by both parties at the argument."

Justice Gray noted that "the failure of the United States to build the National road" was not a foundation for the petition, but was suggested as an incidental explanation of motive. Under the Act of March 3, 1857, the petition contended that "it was immaterial what moneys had been expended by the government toward the construction of the National turnpike." Thus, interpretation of the 1857 Act was the determining factor in the case.

Indiana had argued that the 1857 Act stated that the amount owed was to be settled “upon the same principles” as prescribed for Mississippi and Alabama in the earlier Acts for relinquishing the two-percent. The difference, Justice Gray found, was that Congress had not appropriated the two-percent fund in those other States for road construction:

But there is nothing, in any of the acts upon the subject, which warrants the inference that Congress intended that, because the United States held themselves to be liable to Alabama and to Mississippi for the two per cent fund which they had never applied as they had agreed, they should therefore be liable to the other States for the like two per cent fund which had been fully appropriated and expended in accordance with their obligations to those States.

These views being conclusive against the right of the State of Indiana to recover anything in this case, it is unnecessary to consider the other questions discussed in the opinion of the Court of Claims and argued in this court.

What Searight Said

Thomas B. Searight, in his pioneering 1894 work on the Cumberland Road, explained the significance of the road:

The road which forms the subject of this volume, is the only highway of its kind ever wholly constructed by the government of the United States.

When Congress first met after the achievement of Independence and the adoption of the Federal Constitution, the lack of good roads was much commented upon by our statesmen. But, it was not until 1806, when Jefferson was President, that the proposition for a National Road took practical shape. The first step . . . was the

appointment of commissioners to lay out the road, with an appropriation of money to meet the consequent expense.

The author of this work was born and reared on the line of the road, and has spent his whole life amid scenes connected it. He saw it in the zenith of its glory, and with emotions of sadness witnessed its decline. It was a highway at once so grand and imposing, an artery so largely instrumental in promoting the early growth and development of our country’s wonderful resources, so influential in strengthening the bonds of the American Union, and at the same time so replete with important events and interesting incidents, that the writer of these pages has long cherished a hope that some capable hand would write its history and collect and preserve its legends and no one having come forward to perform the task, he has ventured upon it himself, with unaffected diffidence and a full knowledge of his inability to do justice to the subject.

It is not a little singular that no connected history of the renowned Appian Way can be found in our libraries. Glimpses of its existence and importance are seen in the New Testament and in some old volumes of classic lore, but an accurate and complete history of its inception, purpose, construction and development,

with the incidents, accidents and anecdotes, which of necessity were connected with it, seems never to have been written. This should not be said of the great National Road of the United States of America. The Appian Way has been called the Queen of Roads. We claim for our National highway that it *was* the King of Roads.

From the time it was thrown open to the public, in the year 1818, until the coming of the railroads west of the Allegheny mountains, in 1852, the National Road was the one great highway, over which passed the bulk of trade and travel, and the mails between the East and the West. Its numerous stately stone bridges with handsome turned arches, its iron mile posts and its old iron gates, attest the skill of the workmen engaged on its construction, and to this day remain enduring monuments of its grandeur and solidity, all save the imposing iron gates, which have disappeared by process of conversion prompted by some utilitarian idea, savoring in no little measure of sacrilege.

Many of the most illustrious statesmen and heroes of the early period of our national existence passed over the National Road from their homes to the capital and back, at the opening and closing of the sessions of Congress. Jackson, Harrison, Clay, Sam Houston, Polk, Taylor, Crittenden, Shelby, Allen, Scott, Butler, the eccentric Davy Crocket, and many of their contemporaries in public service were familiar figures in the eyes of the dwellers by the roadside. The writer of these pages frequently saw these distinguished men on their passage over the road, and remembers with no little pride the incident of shaking hands with General Jackson, as he sat in his carriage on the wagon-yard of an old tavern

The National Road was designed to meet the wants of a free and progressive people, and to aid in building up and strengthening a great and growing republic The National Road served its purpose grandly, was a complete success, the pride and glory of its day and generation, and when it lost its place as a national thoroughfare, the government that made it was all the stronger because it had been made.

In the 20th Century

With the dominance of railroads for long distance surface transportation, roads faded as a subject of constitutional debate until the popularity of the bicycle spurred the Good Roads Movement in the 1880s and 1890s. The Cumberland Road, also known as the National Road and the National Pike, had become primarily a local road, much less used for interstate travel than the railroads.

With the growing popularity of the automobile in the 20th century, road supporters began the named trail era of the 1910s to the mid-1920s. Groups identified a route, gave it a colorful name, then served as a quasi-chamber of commerce to promote improvement and use of the road. The Cumberland Road was included in one of earliest and most popular transcontinental roads of the Good Roads era, the National Old Trails Road. It went from

Baltimore, initially, later from Washington to Los Angeles, over 3,000 miles on a series of historic roads, including the Cumberland Road from Cumberland to St. Louis; Boon's Lick Road from St. Louis to the salt springs on the Missouri River, a distance of about 135 miles; and the Santa Fe Trail from Missouri to Santa Fe, New Mexico; from there via the Grand Canyon route to Los Angeles.

In 1925, the Secretary of Agriculture appointed the Joint Board on Interstate Highways to determine a new method of identifying and marking the country's best interstate routes. One goal was to eliminate the approximately 250 named trails, such as the National Old Trails Road, that had been selected by private associations without regard to an organized national road network. The Joint Board recommended creation of the U.S. numbered highway system.

Because the States owned the identified roads, the Secretary submitted the proposal for consideration by the national organization of State highway agencies, the American Association of State Highway Officials (AASHO). After numerous changes in routing and numbering, AASHO adopted the plan on November 11, 1926. The plan made the former Cumberland Road/National Old Trails Road, from Cumberland to St. Louis, part of one of the system's transcontinental roads, U.S. Route 40 (initially from Atlantic City, New Jersey, to San Francisco, California).

Over the years, as roads have been improved, alignments shifted, and a parallel Interstate Highway (I-70) built, U.S. 40 no longer aligns directly with the Cumberland Road, but in many places the old highway, imagined by George Washington, launched under President Thomas Jefferson, and never completed to Jefferson City, Missouri, remains in service.

Under the National Scenic Byways Program, the U.S. Department of Transportation designated the Historic National Road an All-American Road from Maryland to Illinois. Sponsoring associations in each State had nominated the route for designation. While all of America's Byways® involve intrinsic qualities that make them worth visits, roads designated as All-American Roads are a destination in itself.

A Note on Sources

With apologies to historians and other lovers of footnotes, I wrote this article without the scholarly referencing I, to the best of my ability, usually include. I have no excuse.

I hope it helps that most of my sources are cited in the text, although without the usual page references.

For congressional debates, I relied mainly on the HEINONLINE Web site at <https://heinonline.org/HOL/Index?collection=congreg>. I hope that my text provides

enough cite references to allow researchers who want more details to locate them in these records on HEINONLINE or elsewhere.

For the Inaugural Addresses, annual presidential messages to Congress, and other presidential documents, I tended to rely on the text in the congressional records available via HEINONLINE. I also consulted speeches and statements available from The American Presidency Project at <https://www.presidency.ucsb.edu/presidents>.

Text from Acts of Congress came from several sources, but the Library of Congress has posted a useful compilation at <https://www.loc.gov/law/help/statutes-at-large/index.php>.

In addition, I consulted numerous published sources, including some of the following on the Cumberland Road:

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The central question in our political history, pre-dating the Constitution, is the appropriate balance of authority among the central government, State and local governments, and the people. After the attempt to establish the balance in the Articles of Confederation (1777) proved unworkable, the Constitution and the Bill of Rights adjusted the relationships.

From the start, however, during the ratification debates in the States and George Washington's first term as President, the words of the Constitution left enough ambiguity that officials began debating where the central governing document placed the balancing points – and that debate has continued to this day and probably will continue for as long as the country endures. While working on this article, I became fascinated by the congressional discussions that seemingly put the Cumberland Road at the center of the debate on the meaning of the Constitution. At times, the Members of Congress, in the midst of their debates about the Cumberland Road, seemed weary of the never ending conflicts over the same topics, such as the meaning of "establish" or what the framers meant by "regulate commerce," but unable to avoid the debates for fear of compromising their individual or party vision of the balance.

Many Members of Congress involved in the debates are virtually unknown today, recalled by dedicated researchers mainly thanks to the online *Biographical Directory of the United States Congress* at <https://bioguideretro.congress.gov/> or short Wikipedia entries. Others debaters, such as Henry Clay, are well known to historians. Still others involved in the debates on the Cumberland Road went on to become Presidents of the United States or, in the reverse case of President John Quincy Adams, to leave the presidency and join the ongoing debates as a member of the U.S. House of Representatives.

These more prominent debaters have their own biographies and are included in other histories of their times. Few biographers and historians, however, pay much attention to their involvement in the Cumberland Road debates. In that regard, I hope my article provides a look at a lesser known aspect of the lives of these illustrious Americans as they debated passionately on subjects that are mostly forgotten today – the Cumberland Road and internal improvements – before they went on to their ultimate place in the country’s history.

As Presidents, Members of Congress, economic panics, and a war came and went, the Cumberland Road slowly made its way across the eastern half of the country. Over four decades, it stretched from Cumberland, Maryland, to Vandalia, Illinois, while the call for canals, the rise of steamboats, and then, ultimately, the coming of the railroad made road technology, even a road that cost over \$6 million – a shocking, extravagant sum at the time – nearly obsolete except for local service.

As in many of the articles written for the Highway History Web site, “The Nation’s First Mega-Project: A Legislative History of the Cumberland Road” illustrates how the history of highways, and more broadly of transportation, must be understood in the context of the changing economic, political, and social history of the times. Beyond the debates on the understanding of the Constitution, the Cumberland Road evolved during the ups-and-downs of the economy, the comings-and-goings of political parties and Presidents, and the changing technology of transportation.

It’s not true that history runs in cycles, repeats itself, or that those who do not learn from history are doomed to repeat it. It is true, however, that some issues, such as the proper balance between the Federal and State governments, may be debated forever without fear that a universally accepted answer will be found.